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II

98TH CONGRESS
1ST SESSION

S. 338

To revise the procedures for soliciting and evaluating bids and proposals for Government contracts and awarding such contracts, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 1 (legislative day, JANUARY 25), 1983

Mr. COHEN (for himself, Mr. ROTH, Mr. LEVIN, Mr. RUDMAN, Mr. PERCY, Mr. DURENBERGER, Mr. PRYOR, Mr. PROXMIRE, Mr. HEINZ, and Mr. MITCHELL) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

FEBRUARY 2 (legislative day, JANUARY 25), 1983

Ordered, that if and when reported, the bill be referred to the Committee on Armed Services for not to exceed sixty calendar days (excluding any period of seven or more calendar days that the Senate is not in session) to consider any provisions which amend title 10 of the United States Code. Ordered further, that if the bill is not reported within the sixty-day period the committee will be discharged, but in no event will the committee be discharged prior to June 15, 1983.

A BILL

To revise the procedures for soliciting and evaluating bids and proposals for Government contracts and awarding such contracts, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That this Act may be cited as the "Competition in Contract-
- 4 ing Act of 1983".



1 TITLE I—AMENDMENTS TO FEDERAL PROPERTY
2 AND ADMINISTRATIVE SERVICES ACT OF 1949
3 COMPETITIVE AND NONCOMPETITIVE PROCEDURES

4 SEC. 101. (a) Title III of the Federal Property and Ad-
5 ministrative Services Act of 1949 (41 U.S.C. 251 et seq.) is
6 amended—

7 (1) by striking out section 303 (41 U.S.C. 253)
8 and the heading of such section and inserting in lieu
9 thereof the following:

10 “COMPETITION REQUIREMENTS

11 “SEC. 303. (a) Except as provided in subsection (e) or
12 otherwise authorized by law, executive agencies shall use
13 competitive procedures in making contracts for property and
14 services. Executive agencies shall use advance procurement
15 planning and market research and shall prepare specifications
16 in such a manner as is necessary to obtain effective competi-
17 tion with due regard to the nature of the property or services
18 to be acquired. Executive agencies shall use the competitive
19 procedure or combination of competitive procedures that is
20 best suited under the circumstances of the procurement
21 action and shall specify its needs and solicit bids, proposals,
22 or quotations in a manner designed to achieve effective com-
23 petition for the contract.

24 “(b) An executive agency may award a contract under
25 this title in the procurement of property or services in order

1 to establish or maintain any alternative source or sources of
2 supply of such property or services if the executive agency
3 determines that to do so would (1) increase competition and
4 would likely result in reduced overall costs for such procure-
5 ment, or for any anticipated procurement, of such property or
6 services, or (2) be in the interest of industrial mobilization in
7 case of a national emergency.

8 “(c) Procurement regulations shall include special sim-
9 plified procedures and forms for small purchases to facilitate
10 making small purchases efficiently and economically.

11 “(d) For other than small purchases, an executive
12 agency, when using competitive procedures—

13 “(1) shall solicit sealed bids when—

14 “(A) time permits the solicitation, submis-
15 sion, and evaluation of sealed bids;

16 “(B) the award will be made on the basis of
17 price and other factors considered;

18 “(C) it is not necessary to conduct discus-
19 sions with the responding sources about their bids;
20 and

21 “(D) there is a reasonable expectation of re-
22 ceiving more than one sealed bid;

23 “(2) shall request competitive proposals when
24 sealed bids are not required under clause (1) of this
25 subsection.

1 “(e) An executive agency may use noncompetitive pro-
2 cedures only when—

3 “(1) the property and services needed by the Gov-
4 ernment are available from only one source and no
5 other type of property or services will satisfy the needs
6 of the executive agency;

7 “(2) the executive agency’s need for the property
8 or services is of such urgency that the Government
9 would be seriously injured by the delay involved in
10 using competitive procedures;

11 “(3) it is necessary to award the contract to a
12 particular source or sources in order to maintain an es-
13 sential industrial capability in the United States or to
14 achieve national industrial mobilization;

15 “(4) the terms of any agreement with a foreign
16 government, or the directions of any foreign govern-
17 ment reimbursing the executive agency for the cost of
18 the procurement of the property or services for such
19 government, have the effect of requiring the use of
20 noncompetitive procedures;

21 “(5) a statute provides that the procurement be
22 made through another executive agency or a specified
23 source; or

1 “(6) the disclosure of the executive agency’s needs
2 to more than one source would compromise the nation-
3 al security.

4 “(f) An executive agency may not award a contract, for
5 other than small purchases, using noncompetitive procedures
6 unless a notice has been published pursuant to section
7 313(a)(1)(A).”;

8 (2) by adding at the end of section 309 (41
9 U.S.C. 259) the following new subsections:

10 “(b) The term ‘executive agency’ has the same meaning
11 as provided in section 4(a) of the Office of Federal Procure-
12 ment Policy Act (41 U.S.C. 403(a)), except that such term
13 does not include the departments or establishments specified
14 in section 2303(a) of title 10, United States Code.

15 “(c) The term ‘competitive procedures’ means proce-
16 dures under which an executive agency enters into a contract
17 after soliciting sealed bids or competitive proposals from
18 more than one source that is capable of satisfying the needs
19 of the executive agency.

20 “(d) The term ‘noncompetitive procedures’ means proce-
21 dures other than competitive procedures.

22 “(e) The term ‘small purchase’ means any purchase or
23 contract which does not exceed \$25,000. A proposed pro-
24 curement shall not be divided into several procurements pri-

1 marily for the purpose of using the small purchase proce-
2 dures.”; and

3 (3) by adding at the end thereof the following new
4 sections:

5 “SOLICITATION REQUIREMENTS

6 “SEC. 311. (a)(1) Each solicitation under this title shall
7 include specifications which—

8 “(A) consistent with the needs of the executive
9 agency, permit effective competition; and

10 “(B) include restrictive provisions or conditions
11 only to the extent necessary to satisfy such needs or as
12 authorized by law.

13 “(2) For the purposes of paragraph (1), the type of spec-
14 ification included in any solicitation shall depend on the
15 nature of the needs of the executive agency and the market
16 available to satisfy such needs. Subject to such needs, specifi-
17 cations may be stated in terms of—

18 “(A) function so that a variety of products or
19 services may qualify;

20 “(B) performance, including specifications of the
21 range of acceptable characteristics or of the minimum
22 acceptable standards; or

23 “(C) design requirements.

1 “(b) Each solicitation for sealed bids or competitive pro-
2 posals other than for small purchases shall include, in addi-
3 tion to the specifications described in subsection (a)—

4 “(1) a statement of—

5 “(A) all significant factors, including price,
6 which the executive agency reasonably expects to
7 consider in evaluating sealed bids or competitive
8 proposals; and

9 “(B) the relative importance assigned to
10 those factors;

11 “(2) in the case of sealed bids—

12 “(A) a statement that sealed bids will be
13 evaluated without discussions with the bidders;
14 and

15 “(B) the time and place for the opening of
16 the sealed bids; and

17 “(3) in the case of competitive proposals—

18 “(A) a statement that the proposals are in-
19 tended to be evaluated with, and awards made
20 after, discussions with the offerors but might be
21 evaluated and awarded without discussions with
22 the offerors; and

23 “(B) the time and place for submission of
24 proposals.

1 **“EVALUATION AND AWARD**

2 **“SEC. 312. (a) An executive agency shall evaluate**
3 **sealed bids and competitive proposals based on the factors**
4 **specified in the solicitation.**

5 **“(b) All sealed bids or competitive proposals received in**
6 **response to a solicitation may be rejected if the head of the**
7 **executive agency determines that such action is in the public**
8 **interest.**

9 **“(c) Sealed bids shall be opened publicly at the time and**
10 **place stated in the solicitation. The executive agency shall**
11 **evaluate the bids without discussions with the bidders and**
12 **shall, except as provided in subsection (b), award a contract**
13 **with reasonable promptness to the responsible bidder whose**
14 **bid conforms to the solicitation and is most advantageous to**
15 **the United States, considering the price and the other factors**
16 **included in the solicitation under section 311(b)(1). The**
17 **award of a contract shall be made by transmitting written**
18 **notice of the award to the successful bidder.**

19 **“(d)(1) The executive agency shall evaluate competitive**
20 **proposals and may award a contract—**

21 **“(A) after discussions conducted with the offerors**
22 **at any time after receipt of the proposals and prior to**
23 **the award of the contract; or**

1 “(B) without discussions with the offerors beyond
2 discussions conducted for the purpose of minor clarifi-
3 cation.

4 “(2) In the case of award of a contract under paragraph
5 (1)(a), the executive agency shall conduct, before such award,
6 written or oral discussions with all responsible offerors who
7 submit proposals within a competitive range, price and other
8 evaluation factors considered.

9 “(3) In the case of award of a contract under paragraph
10 (1)(B), the executive agency shall award the contract based
11 on the proposals as received (and as clarified, if necessary, in
12 discussions conducted for the purpose of minor clarification).

13 “(4) The executive agency shall, except as otherwise
14 provided in subsection (b), award a contract with reasonable
15 promptness to the responsible offeror whose proposal is most
16 advantageous to the United States, considering price and the
17 other factors included in the solicitation under section
18 311(b)(1). The executive agency shall award the contract by
19 transmitting written notice of the award to such offeror and
20 shall promptly notify all other offerors of the rejection of their
21 proposals.

22 “(e) If the head of an executive agency considers that
23 any bid received under sealed bid procedures evidences a vio-
24 lation of the antitrust laws, he shall refer the bid to the At-
25 torney General for appropriate action.

1 “PROCUREMENT NOTICE

2 “SEC. 313. (a)(1) Except as provided in subsection (c)
3 and subject to paragraph (2)—

4 “(A) an executive agency intending to enter into a
5 contract for property or services at a price exceeding
6 the maximum amount established for small purchases
7 in section 309(e) shall furnish for publication by the
8 Secretary of Commerce a notice described in subsec-
9 tion (b)(1); and

10 “(B) an executive agency awarding a contract for
11 property or services at a price exceeding the maximum
12 amount established for small purchases in section
13 309(e) shall furnish for publication by the Secretary of
14 Commerce a notice announcing such award.

15 “(2) The Administrator for Federal Procurement Policy
16 may establish such minimum price as he considers appropri-
17 ate for the purposes of paragraph (1) at an amount that is
18 lower than the amount referred to in clause (A) or (B) of such
19 paragraph.

20 “(b)(1) Each notice required by subsection (a)(1)(A)
21 shall—

22 “(A) be published as early as practicable in the
23 procurement process, but not less than thirty days
24 before the date set for the receipt of bids or proposals;
25 and

1 “(B) include—

2 “(i) a description of the property or services
3 to be contracted for, which description is not un-
4 necessarily restrictive of competition;

5 “(ii) the identity and location of the officer or
6 employee of the executive agency who may be
7 contacted for the purpose of obtaining a copy of
8 the solicitation;

9 “(iii) a statement that any person may
10 submit a bid, proposal, or quotation which shall be
11 considered by the executive agency; and

12 “(iv) in the case of a procurement using non-
13 competitive procedures, a statement of the reason
14 justifying the use of noncompetitive procedures
15 and the identity of the intended source.

16 “(2) The Secretary of Commerce shall publish promptly
17 each notice required by subsection (a)(1)(B) after the time of
18 the award of the contract.

19 “(c) The requirements of subsection (a) do not apply
20 to—

21 “(1) any classified procurement with respect to
22 which a notice under such subsection cannot be written
23 in a manner which avoids the disclosure of classified
24 information; and

1 “(2) any procurement under conditions described
2 in clauses (2), (3), (4), or (5) of section 303(e).

3 “RECORD REQUIREMENTS

4 “SEC. 314. (a) Each executive agency shall establish
5 and maintain for a period of five years a record, by fiscal
6 year, of the procurements, other than small purchases, in
7 such fiscal year in which—

8 “(1) noncompetitive procedures were used; and

9 “(2) only one bid or proposal was received after
10 competitive procedures were used.

11 “(b) The record established under subsection (a) shall
12 include, with respect to each procurement—

13 “(1) information identifying the source to whom
14 the contract was awarded;

15 “(2) the property or services obtained by the Gov-
16 ernment under the procurement;

17 “(3) the total cost of the procurement;

18 “(4) the reason under section 303(e) for the use of
19 noncompetitive procedures; and

20 “(5) the position of the officers or employees of
21 the executive agency who required and approved the
22 use of noncompetitive procedures in such procurement.

23 “(c) The information included in the record established
24 and maintained under subsection (a) shall be transmitted to
25 the Federal Procurement Data Center referred to in section

1 6(d)(5) of the Office of Federal Procurement Policy Act (41
2 U.S.C. 405(d)(5)).”.

3 (b) The table of contents of such Act is amended—

4 (1) by striking out the item relating to section 303
5 and inserting in lieu thereof the following:

“Sec. 303. Competition requirements.”;

6 and

7 (2) by inserting after the item relating to section
8 310 the following new items:

“Sec. 311. Solicitation requirements.

“Sec. 312. Evaluation of bids; awards.

“Sec. 313. Procurement notice.

“Sec. 314. Record requirements.”.

9 COST AND PRICING DATA

10 SEC. 102. Section 304 of the Federal Property and Ad-
11 ministrative Services Act of 1949 (41 U.S.C. 254) is amend-
12 ed by adding at the end thereof the following new subsection:

13 “(d)(1) A prime contractor or any subcontractor shall be
14 required to submit cost or pricing data under the circum-
15 stances listed below, and shall be required to certify that, to
16 the best of his knowledge and belief, the cost or pricing data
17 he submitted was accurate, complete, and current—

18 “(A) prior to the award of any prime contract
19 under this title using other than sealed bid procedures
20 where the price is expected to exceed \$500,000;

21 “(B) prior to the pricing of any contract change or
22 modification for which the price adjustment is expected

1 to exceed \$500,000, or such lesser amount as may be
2 prescribed by the head of the agency;

3 “(C) prior to the award of a subcontract at any
4 tier, where the prime contractor and each higher tier
5 subcontractor have been required to furnish such a cer-
6 tificate, if the price of such subcontract is expected to
7 exceed \$500,000; or

8 “(D) prior to the pricing of any contract change
9 or modification to a subcontract covered by clause (C),
10 for which the price adjustment is expected to exceed
11 \$500,000, or such lesser amount as may be prescribed
12 by the head of the agency.

13 “(2) Any prime contract or change or modification
14 thereto under which a certificate is required under paragraph
15 (1) shall contain a provision that the price to the Govern-
16 ment, including profit or fee, shall be adjusted to exclude any
17 significant sums by which it may be determined by the execu-
18 tive agency that such price was increased because the con-
19 tractor or any subcontractor required to furnish such a certifi-
20 cate, furnished cost or pricing data which, as of a date agreed
21 upon between the parties (which date shall be as close to the
22 date of agreement on the price as is practicable), was inaccu-
23 rate, incomplete, or noncurrent.

24 “(3) For the purpose of evaluating the accuracy, com-
25 pleteness, and currency of cost or pricing data required to be

1 submitted by this subsection, any authorized representative of
2 the head of the agency who is an employee of the United
3 States Government shall have the right, until the expiration
4 of three years after final payment under the contract or sub-
5 contract, to examine all books, records, documents, and other
6 data of the contractor or subcontractor related to the propos-
7 al for the contract, the discussions conducted on the proposal
8 under this chapter, pricing, or performance of the contract or
9 subcontract.

10 “(4) The requirements of this subsection need not be
11 applied to contracts or subcontracts where the price is based
12 on adequate price competition, established catalog or market
13 prices of commercial items sold in substantial quantities to
14 the general public, prices set by law or regulation or, in ex-
15 ceptional cases where the head of the executive agency de-
16 termines that the requirements of this subsection may be
17 waived and states in writing his reasons for such determina-
18 tion.”.

19 CONFORMING AMENDMENTS

20 SEC. 103. (a) Title III of the Federal Property and Ad-
21 ministrative Services Act of 1949 (41 U.S.C. 251 et seq.) is
22 amended—

23 (1) in section 302 (41 U.S.C. 252)—

24 (A) by striking out the second sentence in
25 subsection (b);

1 (B) by striking out subsections (c) and (d);
2 and

3 (C) by redesignating subsections (e) and (f) as
4 subsections (c) and (d), respectively;

5 (2) by striking out the heading of section 304 and
6 inserting in lieu thereof the following:

7 "CONTRACT REQUIREMENTS";

8 (3) in section 304 (41 U.S.C. 254)—

9 (A) by striking out "negotiated pursuant to
10 section 302(c)" in the first sentence of subsection
11 (a) and inserting in lieu thereof "awarded using
12 other than sealed bid procedures";

13 (B) by striking out "negotiated pursuant to
14 section 302(c)" in the second sentence of subsec-
15 tion (a) and inserting in lieu thereof "awarded
16 after using other than sealed bid procedures"; and

17 (C) by striking out "negotiated without ad-
18 vertising pursuant to authority contained in this
19 Act" in the first sentence of subsection (c) and in-
20 serting in lieu thereof "awarded after using other
21 than sealed bid procedures";

22 (4) in section 307 (41 U.S.C. 257)—

23 (A) by striking out "Except as provided in
24 subsection (b), and except" in the second sentence

17

1 of subsection (a) and inserting in lieu thereof
2 “Except”;

3 (B) by striking out subsection (b);

4 (C) by striking out “by paragraphs (11)–(13),
5 or (14) of section 302(c),” in subsection (c);

6 (D) by redesignating subsection (c) as subsec-
7 tion (b); and

8 (E) by striking out subsection (d);

9 (5) by striking out “entered into pursuant to sec-
10 tion 302(c) without advertising,” in section 308 and in-
11 serting in lieu thereof “made or awarded after using
12 other than sealed bid procedures”; and

13 (6) by striking out “section 302(c)(15) of this title
14 without regard to the advertising requirements of sec-
15 tions 302(c) and 303.” in section 310 and inserting in
16 lieu thereof “the provisions of this title relating to
17 other than sealed bid procedures.”.

18 (b) The table of contents of such Act is amended by
19 striking out the item relating to section 304 and inserting in
20 lieu thereof the following:

“Sec. 304. Contract requirements.”.

21 **TITLE II—AMENDMENTS TO TITLE 10, UNITED**
22 **STATES CODE**

23 **COMPETITIVE AND NONCOMPETITIVE PROCEDURES**

24 **SEC. 201. (a) Chapter 137 of title 10, United States**
25 **Code, is amended—**

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1 (1) in section 2302—

2 (A) by inserting “the Secretary, any Deputy
3 Secretary, any Under Secretary, or any Assistant
4 Secretary of Defense;” after “means” in clause
5 (1);

6 (B) by striking out clauses (2) and (3) of sec-
7 tion 2302 and inserting in lieu thereof the follow-
8 ing:

9 “(2) ‘Agency’ means any department or establish-
10 ment specified in section 2303(a) of this title.

11 “(3) ‘Competitive procedures’ means procedures
12 under which the head of an agency enters into a con-
13 tract after soliciting sealed bids or competitive propos-
14 als from more than one source that is capable of satis-
15 fying the needs of the agency.

16 “(4) ‘Noncompetitive procedures’ means proce-
17 dures other than competitive procedures.

18 “(5) ‘Small purchase’ means any purchase or con-
19 tract which does not exceed \$25,000. A proposed pro-
20 curement shall not be divided into several procure-
21 ments primarily for the purpose of using small pur-
22 chase procedures.”;

23 (2) in section 2303(a)—

1 (A) by redesignating clauses (1), (2), (3), (4),
2 and (5) as clauses (2), (3), (4), (5), and (6), respec-
3 tively; and

4 (B) by inserting before clause (2) (as redesign-
5 nated by subclause (A)) the following:

6 “(1) The Department of Defense.”;

7 (3) by striking out sections 2304 and 2305 and in-
8 serting in lieu thereof the following:

9 **“§ 2304. Competition requirements**

10 “(a) Except as provided in subsection (e) of this section
11 or otherwise authorized by law, the head of an agency shall
12 use competitive procedures in making contracts for property
13 and services. The head of an agency shall use advance pro-
14 curement planning and market research and shall prepare
15 specifications in such a manner as is necessary to obtain ef-
16 fective competition with due regard to the nature of the prop-
17 erty or services to be acquired. The head of an agency shall
18 use the competitive procedure or combination of competitive
19 procedures that is best suited under the circumstances of the
20 procurement action and shall specify the needs of the agency
21 and solicit bids, proposals, or quotations in a manner de-
22 signed to achieve effective competition for the contract.

23 “(b) The head of an agency may award a contract under
24 this title in the procurement of property or services in order
25 to establish or maintain any alternative source or sources of

1 supply of such property or services if such head of an agency
2 determines that to do so would (1) increase competition and
3 would likely result in reduced overall costs for such procure-
4 ment, or for any anticipated procurement, of property or
5 services, or (2) be in the interest of industrial mobilization in
6 case of a national emergency.

7 “(c) Procurement regulations shall include special sim-
8 plified procedures and forms for small purchases to facilitate
9 making small purchases efficiently and economically.

10 “(d) For other than small purchases, the head of an
11 agency, when using competitive procedures—

12 “(1) shall solicit sealed bids when—

13 “(A) time permits the solicitation, submis-
14 sion, and evaluation of sealed bids;

15 “(B) the award will be made on the basis of
16 price and other factors considered;

17 “(C) it is not necessary to conduct discus-
18 sions with the responding sources about their bids;
19 and

20 “(D) there is reasonable expectation of re-
21 ceiving more than one sealed bid;

22 “(2) shall request competitive proposals from re-
23 sponding sources when sealed bids are not required
24 under clause (1) of this subsection.

1 “(e) The head of an agency may use noncompetitive
2 procedures only when—

3 “(1) the property and services needed by the Gov-
4 ernment are available from only one source and no
5 other type of property or services will satisfy the needs
6 of the agency;

7 “(2) the agency’s need for the property or services
8 is of such urgency that the Government would be seri-
9 ously injured by the delay involved in using competi-
10 tive procedures;

11 “(3) it is necessary to award the contract to a
12 particular source or sources in order to maintain an es-
13 sential industrial capability in the United States or to
14 achieve national industrial mobilization;

15 “(4) the terms of any agreement with a foreign
16 government, or the directions of any foreign govern-
17 ment reimbursing the agency for the cost of the pro-
18 curement of the property or services for such govern-
19 ment, have the effect of requiring the use of
20 noncompetitive procedures;

21 “(5) a statute provides that the procurement be
22 made through another agency or a specified source; or

23 “(6) the disclosure of the agency’s needs to more
24 than one source would compromise the national secu-
25 rity.

1 “(f) The head of an agency may not award a contract,
2 for other than small purchases, using noncompetitive proce-
3 dures unless a notice has been published pursuant to section
4 2305(c)(1)(A)(i) of this title.

5 **“§ 2305. Solicitation, evaluation, and award procedures;**
6 **notice requirements**

7 “(a)(1)(A) Each solicitation under this title shall include
8 specifications which—

9 “(i) consistent with the needs of the agency,
10 permit effective competition; and

11 “(ii) include restrictive provisions or conditions
12 only to the extent necessary to satisfy such needs or as
13 authorized by law.

14 “(B) For the purposes of subparagraph (A) of this para-
15 graph, the type of specification included in any solicitation
16 shall depend on the nature of the needs of the agency and the
17 market available to satisfy such needs. Subject to such needs,
18 specifications may be stated in terms of—

19 “(i) function so that a variety of products or serv-
20 ices may qualify;

21 “(ii) performance, including specifications of the
22 range of acceptable characteristics or of the minimum
23 acceptable standards; or

24 “(iii) design requirements.

1 “(2) Each solicitation for sealed bids or competitive pro-
2 posals other than for small purchases shall include, in addi-
3 tion to the specifications described in paragraph (1) of this
4 subsection—

5 “(A) a statement of—

6 “(i) all significant factors, including price,
7 which the executive agency reasonably expects to
8 consider in evaluating sealed bids or competitive
9 proposals; and

10 “(ii) the relative importance assigned to
11 those factors;

12 “(B) in the case of sealed bids—

13 “(i) a statement that sealed bids will be eval-
14 uated without discussions with the bidders; and

15 “(ii) the time and place for the opening of
16 the sealed bids; and

17 “(C) in the case of competitive proposals—

18 “(i) a statement that the proposals are in-
19 tended to be evaluated with, and awards made
20 after, discussions with the offerors but might be
21 evaluated and awarded without discussions with
22 the offerors; and

23 “(ii) the time and place for submission of
24 proposals.

1 “(b)(1) The head of an agency shall evaluate sealed bids
2 and competitive proposals based on the factors specified in
3 the solicitation.

4 “(2) All sealed bids or competitive proposals received in
5 response to a solicitation may be rejected if the head of an
6 agency determines that such action is in the public interest.

7 “(3) Sealed bids shall be opened publicly at the time and
8 place stated in the solicitation. The head of an agency shall
9 evaluate the bids without discussions with the bidders and
10 shall, except as provided in paragraph (2) of this subsection,
11 award a contract with reasonable promptness to the responsi-
12 ble bidder whose bid conforms to the solicitation and is most
13 advantageous to the United States, considering the price and
14 the other factors included in the solicitation under subsection
15 (a)(2)(A) of this section. The award of a contract shall be
16 made by transmitting written notice of the award to the suc-
17 cessful bidder.

18 “(4)(A) The head of an agency shall evaluate competi-
19 tive proposals and may award a contract—

20 “(i) after discussions conducted with the offerors
21 at any time after receipt of the proposals and prior to
22 the award of the contract; or

23 “(ii) without discussions with the offerors beyond
24 discussions conducted for the purpose of minor clarifi-
25 cation.

25

1 “(B) In the case of award of a contract under subpara-
2 graph (A)(i) of this paragraph, the head of an agency shall
3 conduct, before such award, written or oral discussions with
4 all responsible offerors who submit proposals within a com-
5 petitive range, price and other evaluation factors considered.

6 “(C) In the case of award of a contract under subpara-
7 graph (A)(ii) of this paragraph, the head of an agency shall
8 award the contract based on the proposals received (and as
9 clarified, if necessary, in discussions conducted for the pur-
10 pose of minor clarification).

11 “(D) The head of an agency shall, except as provided in
12 paragraph (2) of this subsection, award a contract with rea-
13 sonable promptness to the responsible offeror whose proposal
14 is most advantageous to the United States, considering price
15 and other factors included in the solicitation under subsection
16 (a)(2)(A) of this section. The head of the agency shall award
17 the contract by transmitting written notice of the award to
18 such offeror and shall promptly notify all other offerors of the
19 rejection of their proposals.

20 “(5) If the head of an agency considers that any bid
21 received under sealed bid procedures evidences a violation of
22 the antitrust laws, he shall refer the bid to the Attorney Gen-
23 eral for appropriate action.

1 “(c)(1)(A) Except as provided in paragraph (3) of this
2 subsection and subject to subparagraph (B) of this para-
3 graph—

4 “(i) a head of an agency intending to enter into a
5 contract for property or services at a price exceeding
6 the maximum amount established for small purchases
7 in section 2302(5) of this title shall furnish for publica-
8 tion by the Secretary of Commerce a notice described
9 in paragraph (2)(A) of this subsection; and

10 “(ii) a head of an agency awarding a contract for
11 property or services at a price exceeding the maximum
12 amount established for small purchases in section
13 2302(5) of this title shall furnish for publication by the
14 Secretary of Commerce a notice announcing such
15 award.

16 “(B) The Administrator for Federal Procurement Policy
17 may establish such minimum price as he considers appropri-
18 ate for the purposes of subparagraph (A) of this paragraph at
19 an amount that is lower than the amount referred to in clause
20 (i) or (ii) of such subparagraph.

21 “(2)(A) Each notice required by paragraph (1)(A)(i) of
22 this subsection shall—

23 “(i) be published as early as practicable in the
24 procurement process, but not less than thirty days

1 before the date set for the receipt of bids or proposals;
2 and

3 “(ii) include a description of the property or serv-
4 ices to be contracted for (which description is not un-
5 necessarily restrictive of competition), the identity and
6 location of the officer or employee of the agency who
7 may be contacted for the purpose of obtaining a copy
8 of the solicitation, a statement that any person may
9 submit a bid, proposal, or quotation which shall be con-
10 sidered by the head of an agency, and in the case of a
11 procurement using noncompetitive procedures, a state-
12 ment of the reason justifying the use of noncompetitive
13 procedures and the identity of the intended source.

14 “(B) The Secretary of Commerce shall publish promptly
15 each notice required by paragraph (1)(A)(ii) of this subsection
16 after the time of the award of the contract.

17 “(3) The requirements of paragraph (1) of this subsec-
18 tion do not apply to—

19 “(A) any classified procurement with respect to
20 which a notice under such paragraph cannot be written
21 in a manner which avoids the disclosure of classified
22 information; and

23 “(B) any procurement under conditions described
24 in clause (2), (3), (4), or (5) of section 2304(e).”; and

1 (4) by adding at the end thereof the following new
2 section:

3 **“§ 2316. Record requirements**

4 “(a) Each head of an agency shall establish and main-
5 tain for a period of five years a record, by fiscal year, of the
6 procurements, other than small purchases, in such fiscal year
7 in which—

8 “(1) noncompetitive procedures were used; and

9 “(2) only one bid or proposal was received after
10 competitive procedures were used.

11 “(b) The record established under subsection (a) of this
12 section shall include, with respect to each procurement—

13 “(1) information identifying the source to whom
14 the contract was awarded;

15 “(2) the property or services obtained by the Gov-
16 ernment under the procurement;

17 “(3) the total cost of the procurement;

18 “(4) the reason under section 2304(e) of this title
19 for the use of noncompetitive procedures; and

20 “(5) the position of the officers or employees of
21 the agency who required and approved the use of non-
22 competitive procedures in such procurement.

23 “(c) The information included in the record established
24 and maintained under subsection (a) shall be transmitted to
25 the Federal Procurement Data Center referred to in section

1 6(d)(5) of the Office of Federal Procurement Policy Act (41
2 U.S.C. 405(d)(5)).”.

3 (b) The table of sections at the beginning of such chap-
4 ter is amended—

5 (1) by striking out the items relating to sections
6 2304 and 2305 and inserting in lieu thereof the follow-
7 ing:

“2304. Competition requirements.

“2305. Solicitation, evaluation, and award procedures; notice requirements.”;

8 and

9 (2) by adding at the end thereof the following new
10 item:

“2316. Record requirements.”.

11 CONFORMING AMENDMENTS

12 SEC. 202. Chapter 137 of title 10, United States Code,
13 is amended—

14 (1) in section 2306—

15 (A) by striking out “may, in negotiating con-
16 tracts under section 2304,” in the second sen-
17 tence of subsection (a) and inserting in lieu thereof
18 “may in awarding contracts after using other than
19 sealed bid procedures”;

20 (B) by striking out “negotiated under section
21 2304” in the first sentence of subsection (b) and
22 inserting in lieu thereof “awarded after using
23 other than sealed bid procedures”;

1 (C) by striking out "section 2304 of this
2 title," in subsection (c) and inserting in lieu there-
3 of "this chapter";

4 (D) in subsection (f)(1)—

5 (i) by striking out clause (A) and insert-
6 ing in lieu thereof the following:

7 "(1) prior to the award of any prime contract
8 under this title after using other than sealed bid proce-
9 dures where the price is expected to exceed
10 \$500,000;";

11 (ii) by striking out "negotiated" each
12 place it appears in the second paragraph; and

13 (iii) by striking out "negotiation," in the
14 third paragraph and inserting in lieu thereof
15 "proposal for the contract, the discussions
16 conducted on the proposal under this title,";
17 and

18 (E) by adding at the end thereof the follow-
19 ing new subsection:

20 "(i) Except in a case in which the Secretary of Defense
21 determines that military requirements necessitate the specifi-
22 cation of container sizes, no contract for the carriage of Gov-
23 ernment property in other than Government-owned cargo
24 containers shall require carriage of such property in cargo
25 containers of any stated length, height, or width.";

31

1 (2) by striking out subsection (b) of section 2310
2 and inserting in lieu thereof the following:

3 “(b) Each determination or decision under section
4 2306(c), section 2306(g)(1), section 2307(c), or section
5 2313(c) of this title shall be based on a written finding by the
6 person making the determination or decision, which finding
7 shall set out facts and circumstances that (1) clearly indicate
8 why the type of contract selected under section 2306(c) is
9 likely to be less costly than any other type or that it is im-
10 practicable to obtain property or services of the kind or qual-
11 ity required except under such a contract, (2) support the
12 findings required by section 2306(g)(1), (3) clearly indicate
13 why advance payments under section 2307(c) would be in the
14 public interest, or (4) clearly indicate why the application of
15 section 2313(b) to a contract or subcontract with a foreign
16 contractor or foreign subcontractor would not be in the public
17 interest. Such a finding is final and shall be kept available in
18 the agency for at least six years after the date of the determi-
19 nation or decision. A copy of the finding shall be submitted to
20 the General Accounting Office with each contract to which it
21 applies.”;

22 (3) by striking out section 2311 and inserting in
23 lieu thereof the following: “The head of an agency may
24 delegate, subject to his direction, to any other officer

1 or official of that agency, any power under this chap-
2 ter.”; and

3 (4) by striking out “negotiated” in the second sen-
4 tence of section 2313(b) and inserting in lieu thereof
5 “awarded after using other than sealed bid proce-
6 dures”.

7 TITLE III—ADVOCATE FOR COMPETITION;
8 ANNUAL REPORT ON COMPETITION

9 DEFINITION

10 SEC. 301. For the purposes of this title, the term “ex-
11 ecutive agency” has the same meaning as provided in section
12 4(a) of the Office of Federal Procurement Policy Act (41
13 U.S.C. 403(a)).

14 ADVOCATE FOR COMPETITION

15 SEC. 302. (a)(1) There is established in each executive
16 agency an advocate for competition.

17 (2) Each head of an executive agency shall—

18 (A) designate for each executive agency one offi-
19 cer or employee serving in a position authorized for
20 such executive agency on the date of enactment of this
21 Act to serve as the advocate for competition;

22 (B) relieve such officer or employee of all duties
23 and responsibilities that are inconsistent with the duties
24 and responsibilities of the advocate for competition; and

1 (C) provide such officer or employee with such
2 staff or assistance as may be necessary to carry out the
3 duties and responsibilities of the advocate for competi-
4 tion.

5 (b)(1) The advocate for competition shall promote com-
6 petition in the procurement of property and services.

7 (2) The advocate for competition in an executive agency
8 shall—

9 (A) review the purchasing and contracting activi-
10 ties of the executive agency;

11 (B) identify and report to the head of the execu-
12 tive agency—

13 (i) opportunities to achieve competition on
14 the basis of price and other significant factors in
15 the purchases and contracts of the executive
16 agency;

17 (ii) solicitations and proposed solicitations
18 which include unnecessarily detailed specifications
19 or unnecessarily restrictive statements of need
20 which may reduce competition in the procurement
21 activities of the executive agency; and

22 (iii) any other condition or action which has
23 the effect of unnecessarily restricting competition
24 in the procurement actions of the executive
25 agency; and

1 (C) prepare and transmit to the head of the execu-
2 tive agency an annual report describing his activities
3 under this section.

4 ANNUAL REPORT

5 SEC. 303. (a) Not later than September 30 of each of
6 1983, 1984, 1985, and 1986, each head of an executive
7 agency shall transmit to the Committee on Governmental Af-
8 fairs of the Senate and the Committee on Government Oper-
9 ations of the House of Representatives an annual report in-
10 cluding the information specified in subsection (b).

11 (b) Each report transmitted under subsection (a) shall
12 include—

13 (1) a specific description of all actions that the
14 head of the executive agency intends to take during
15 the next fiscal year to—

16 (A) increase competition for contracts with
17 the executive agency on the basis of price and
18 other significant factors; and

19 (B) reduce the number and dollar value of
20 contracts entered into by the executive agency
21 after soliciting bids or proposals from, or evaluat-
22 ing bids or proposals with discussions with, only
23 one source; and

24 (2) a summary of the activities and accomplish-
25 ments of the advocates for competition of the executive

35

1 agency during the fiscal year in which the report is
2 transmitted.

3 **TITLE IV—NOTICE REQUIREMENTS UNDER THE**
4 **SMALL BUSINESS ACT**

5 **SEC. 401.** Section 8(e) of the Small Business Act (72
6 Stat. 389; 15 U.S.C. 637(e)) is repealed.

7 **TITLE V—APPLICABILITY**

8 **SEC. 501.** The amendments made by this Act shall
9 apply with respect to any solicitations for bids or proposals
10 issued on or after the date one hundred and eighty days after
11 the date of the enactment of this Act.

○

1 extra
S. HRG. 98-9

**S. 272, A BILL TO IMPROVE SMALL BUSINESS
ACCESS TO FEDERAL PROCUREMENT INFORMA-
TION, AND S. 273, THE MINORITY SMALL
BUSINESS PILOT PROCUREMENT ACT OF 1983**

*Sum, P 4x
Jfk
Procurement*

HEARING
BEFORE THE
COMMITTEE ON SMALL BUSINESS
UNITED STATES SENATE
NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

S. 272, A BILL TO IMPROVE SMALL BUSINESS ACCESS TO FEDERAL PRO-
CUREMENT INFORMATION, AND S. 273, THE MINORITY SMALL BUSI-
NESS PILOT PROCUREMENT ACT OF 1983

FEBRUARY 2, 1983



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**S. 272, A BILL TO IMPROVE SMALL BUSINESS
ACCESS TO FEDERAL PROCUREMENT INFOR-
MATION, AND S. 273, THE MINORITY SMALL
BUSINESS PILOT PROCUREMENT ACT OF 1983**

WEDNESDAY, FEBRUARY 2, 1983

**U.S. SENATE,
SMALL BUSINESS COMMITTEE,
*Washington, D.C.***

The committee met, pursuant to notice, at 9:32 a.m., in room 428A, Russell Senate Office Building, Hon. Larry Pressler (acting chairman of the committee) presiding.

Present: Senators Weicker, Rudman, Kasten, Pressler, and Huddleston.

Staff present: Robert J. Dotchin, staff director; Robert M. Wilson, counsel; Alan L. Chvotkin, chief counsel, minority; Kimberly A. Elliott, staff of Senator Weicker; and Dorothy C. Olsen, hearing clerk.

**STATEMENT OF HON. LARRY PRESSLER, A U.S. SENATOR FROM
THE STATE OF SOUTH DAKOTA**

Senator PRESSLER. The hearing will come to order.

Today the Small Business Committee is meeting to consider S. 272, a bill I introduced to improve small business access to Federal procurement procedures. By amending existing procedures for advertising upcoming Government contracts and improving the system for bidding on them, this bill, if enacted, would go a long way toward opening up the Federal procurement system to small Government contractors.

Despite its beauty and resources, South Dakota is not the procurement center of the country. Accordingly, small business owners in my State are at a severe competitive disadvantage when the Commerce Business Daily, CBD, arrives late or contains inadequate information. As the principal source of information about Government procurement needs, the CBD becomes a "contractor's bible" to those who cannot afford to hire people to monitor the complex Federal purchasing system. So, when a synopsis appears in the CBD on or after the date bid documents are available, or when notice of an upcoming contract is printed after an award is made, the small business contractors in South Dakota, and indeed all around the country, have been dealt with unfairly.

To remedy this situation, I introduced S. 272 last week. Briefly, the bill establishes minimum time limits for advertising of and bidding of Federal contracts. It contains a list of exemptions to adver-

tising in the CBD altogether and provides other exemptions from time limits contained in the bill.

The bill that I introduced is not much different from the version introduced during the last two Congresses. Two minor changes relating to 8(a) and small business innovation research awards and to procurements let by the Tennessee Valley Authority are the only ways that S. 272 differs from S. 1947.

Now, I know that the procuring agencies will probably oppose this bill; they certainly did not support S. 1947 last year. These agencies claim that the statutory time limits do not allow for the necessary "flexibility" for shorter bidding times when required by unusual circumstances. Well, as I understand it, a typical Federal procurement takes several months. For the most part, S. 272 would add only five or so days to the advertising/bidding time now required by Federal regulations. The exception is research and development procurement.

In my opinion, a few extra days is an acceptable amount of time for an agency to wait if you consider the benefits. More small businesses will be able to compete for Federal contracts and, since we all know that maximum competition tends to reduce costs, I can only conclude that the benefits of S. 272 outweigh its potential disadvantages.

In addition, I believe it is in the national interest for Federal agencies to engage in advance procurement planning whenever possible. Perhaps this legislation before us will further promote this concept.

I have tremendous faith in the Nation's small businesses and in the free enterprise system. If given the chance, I believe that small firms can supply quality goods and services at lower costs to the Federal Government. I believe that S. 272 is a good start toward procurement equity for small businesses. I look forward to hearing from our witnesses this morning and to the expeditious consideration of S. 272 by the committee.

At this time I will call on Jim Sanders to make his opening remarks.

However, prior to your proceeding, I would ask that the opening statement of the chairman, Senator Weicker, be included in the hearing record.

[The prepared statement of Senator Weicker follows:]

STATEMENT OF HON. LOWELL WEICKER, JR., A U.S. SENATOR FROM THE STATE OF CONNECTICUT, AND CHAIRMAN, COMMITTEE ON SMALL BUSINESS

Good Morning. We have convened today to reconsider two bills that were favorably reported by the committee during the 97th Congress. My intention is to receive testimony on both pieces of legislation this morning. I hope that the committee will then move to mark-up both S. 272 and S. 273 and favorably report them to the full Senate.

S. 272, a bill to amend the procedures for advertising in the Commerce Business Daily and for bidding on public contracts, is almost identical to S. 1947, a bill that passed the full Senate on May 27, 1982. Similar Legislation passed the House of Representatives as well during the last session. However, Substantive Differences in the two bills, not related to the Commerce Business Daily provisions prevented final enactment of the legislation.

This committee previously held two days of hearings on the difficulties encountered by small business owners who depend on the Commerce Business Daily for information about upcoming Government contracts. During those hearings, the committee also learned that regulations governing the Commerce Business Daily are

largely ignored by procuring agencies and are virtually unenforceable. I encourage all those interested to review the hearing record on S. 1947 in conjunction with the testimony we will receive today. Together, they will give a wide range of views on the need for this legislation.

Very simply, S. 272 seeks to protect the rights of small business contractors by establishing minimum time periods for advertising Government contracts and for bidding on them. The legislation also creates a two-tiered system of exemptions from advertising in the publication. Finally, S. 272 addresses a long-standing need to make sole-source contracting a more accountable Process.

As I mentioned earlier, S. 272 is similar to S. 1947; the only changes are clarifying in nature. The first provides that SBA 8(A) Contracts and Small Business Innovation Research (SBIR) awards are exempt from the bill's sole-source procurement provisions. The second clarifies the responsibilities of the Tennessee Valley Authority under the act.

S. 272 enjoys widespread support by the small business community. Due to time constraints, several small business organizations, including Small Business United, SBANE, the national small business association, the national small business Government contractors, The National Association of Aircraft and Communication Suppliers, and the American Consulting Engineers Council, have agreed to submit statements for the hearing record later this week. I would like to take this opportunity to thank each of them for their continued support of this legislation.

The second bill that we will consider today is S. 273, The Minority Small Business Procurement Act of 1983. This bill reauthorizes the SBA 8(a) pilot procurement program, which expired on September 30, 1981. It is identical to S. 1620, which the committee reported out unanimously in the 97th Congress. Because of other non-germane amendments which Senators attached to that bill, it was never acted on by the Senate.

The underlying concept of the pilot program is to give the SBA Administrator the added authority, in one Federal agency, to select contracts for the 8(a) program. The program previously operated in the Department of the Army. The pilot program was created in 1978 as part of an effort to move firms owned by socially and economically disadvantaged persons away from such traditional areas of concentration as janitorial and food services and into rapidly growing fields such as high technology.

S. 273 extends the authority for the pilot program for 18 months from the date of enactment. It also requires the president to designate within 60 days of enactment a civilian agency to be the pilot agency.

I believe this program can be very beneficial to firms in the SBA 8(a) program, especially in improving the quality of contracts which firms may receive.

Today we will hear from Jim Sanders of SBA on how he will implement this authority it is enacted. Dewey Thomas, the executive director of the National Association of Minority Contractors. Also we have statements for the record from the Black President's Roundtable, the Latin American Manufacturers Association, Opportunity Industrialization Centers, Inc., and the National Urban League in support of the legislation.

THE BLACK PRESIDENTS' ROUNDTABLE, 1331 H STREET, N.W., SUITE 400
Washington, D.C., February 1, 1983.

Hon. LOWELL WEICKER, Jr.
Chairman, Committee on Small Business,
U.S. Senate, Washington, D.C.

DEAR SENATOR WEICKER: The Black President's Roundtable wishes to commend you for the introduction of S. 273 to reauthorize the Small Business Administration's Section 8(a) pilot procurement program and pledge our full support to your efforts.

However, we feel that your bill would be most effective in creating new contract opportunities for minority businesses and the resultant creation of jobs and economic growth if the Department of Defense were not specifically excluded. Given the current economic climate and program reductions in most civilian agencies, the Department of Defense and possibly the Department of Transportation offer the broadest base for accomplishing the original goal of the pilot program, which was to provide minority businesses access to contracts in those high technology areas from which they have been traditionally excluded. Further, the inclusion of the Department of Defense with its very large budget base will maximize the potential for achievement of the goals set forth in the President's policy statement on minority business issued on December 17, 1982.

Again, we pledge our full support of your continuing efforts on behalf of small business in general and minority business in particular.

Very sincerely yours,

CLARENCE H. BRADDOCK, Jr.,
President.

STATEMENT OF STEPHEN DENLINGER, PRESIDENT, LATIN AMERICAN MANUFACTURERS ASSOCIATION, WASHINGTON, D.C.

Mr. Chairman, my name is Stephen Denlinger and I am the President of LAMA—the Latin American Manufacturers Association. As you are aware, LAMA is a national trade association of over 500 Hispanic Manufacturing and technical firms nationwide.

Thank you for this opportunity to provide LAMA's testimony regarding the renewal of SBA's pilot program authority under S273. I testified on this subject before this your Committee in September 1981, and you know of our appreciation for your support of this legislation.

We feel that the pilot authority is a vital tool for SBA to capture some of the larger, more technical requirements that are not available through the regular 8(a) program. Without this authority, the Reverse Osmosis unit would never have been awarded to Univox, and the Military Standard Engine would never have been awarded to Welbilt.

You will also recall that we are not in favor of the exclusion of the Defense Department from the pilot program, since most of our members nationwide have technical capabilities related to the Defense acquisition program. Given DOD's staggering \$1,600,000,000 budget over the next five years, it is difficult for us to accept the DOD exclusion.

I would like to provide you with an example of why the pilot authority should be retained with respect to DOD. Over the past several years, DOD has purchased \$150 to \$250 million worth of generator sets per year ranging from 5 to 500 KVA. Attempts to secure any portion of these requirements have failed. I have attached a copy of LAMA's correspondence to the U.S. Army Troop Support and Aviation Readiness Command regarding generator set requirements. My letter was never answered. While not all military installations are this unresponsive, this example illustrates a case wherein the pilot authority could be used effectively.

Admittedly, there have been difficulties with the pilot program. Perhaps, therefore, certain additional parameters should be placed on the program to improve it. For instance, rather than deleting the DOD completely, perhaps the pilot authority could apply to no more than 10 requirements at each Federal agency. In this manner, the pilot would be tested more broadly without unduly taxing one particular agency. If the pilot is successful, then the authority could be expanded to a larger number of requirements in all of the agencies.

In addition, requirements selected by SBA for the pilot should be directed related to the 8(a) firm's current capability. It might also be wise to establish a ceiling on the yearly dollar value of individual pilot requirements for the program more manageable. The yearly dollar value might be defined by capability as follows: (1) Service contracts \$10 million; (2) Construction \$20 million; and (3) Manufacturing \$30 million.

I trust that the ideas contained herein may be useful to your Committee in your deliberations on the renewal of the pilot authority. Thank you again for your interest in LAMA's position on this matter and for your continued support for small and minority business.

LATIN AMERICAN MANUFACTURERS ASSOCIATION,
Washington, D.C., March 31, 1981.

Dr. KENNAN,
*Director Procurement, U.S. Army Aviation Research and Development Command (A),
St. Louis, Mo.*

DEAR DR. KENNAN: I would like to take this opportunity to introduce a fine 8(a) firm recently approved for the Army Pilot Program and involved in the manufacture of diesel generator sets. I would like to request that you consider the firm for your diesel generator requirements. The firm's name and address is listed below: Tayko Industries, 8604 Elder Creek Road, Sacramento, Calif.

Tayko manufactures custom specified generator sets ranging from 10 to 150 KW, including all the electronic control components, sheet metal, and structural metal fabrication.

Tayko is a technically qualified 8(a) firm with excellent capabilities, as you can see by the attached brochure. They would be a valuable addition to your network of suppliers.

Please contact LAMA if you need additional information. We will follow the progress of this recommendation and look forward to working with you on this and other requirements. Thank you for your consideration.

Sincerely,

STEPHEN DENLINGER,
President.

STATEMENT OF REV. LEON H. SULLIVAN, CHAIRMAN OF THE BOARD, OPPORTUNITIES
INDUSTRIALIZATION CENTERS, INC.

Mr. Chairman, my name is Leon Sullivan. I wish to give my categorical and unequivocal support to the legislation introduced by Senator Lowell Weicker known as S273, the Minority Small Business Pilot Procurement Act of 1983.

The history of this effort by the White House and the Congress to assist Minority and Small Businesses enter the mainstream of the American Economy has led to today's genuine need for this kind of legislation.

Beginning in the years of the Nixon Presidency and continuing through the 1983 and the 98th Congress, there has been a gap between the promise and the performance of the government with regard to Minority and Small Businesses obtaining access to the procurement process.

As in the case of the developing new weaponry for military purposes the pilot project or prototype development method is unquestionably the best way to proceed if we are serious about a long-term solution to this problem.

I believe that Senator Weicker's Bill therefore is a step in the right direction.

Despite the preference of some for targeting the Defense Department as "the pilot" I see no objection to the selection of a non-military agency to demonstrate how it can be done with maximum efficiency and minimum cost.

For example the Department of Transportation with its myriad functions which require procurements such as the Coast Guard, the Federal Railway, Federal Highway and Federal Aviation agencies provides a great opportunity for R & D and testing in a pilot project.

Mr. Chairman this Bill deserves the full support and enthusiastic acclaim of those of us who have been engaged in the business of helping to create small a minority-owned business in the inner-city.

I, for one wish to assure you that you have my full support for your bill to reauthorize the extension of the S.B.A. 8A Pilot Program.

NATIONAL URBAN LEAGUE, INC.,
Washington, D.C., February 1, 1983.

Hon. LOWELL WEICKER,
*Chairman, Senate Small Business Committee,
Russell Senate Office Building, Washington, D.C.*

DEAR SENATOR WEICKER: The National Urban League, Inc. is pleased to lend its support to S. 273, which would extend the Small Business Administration's 8(a) pilot procurement authority. Despite the difficulties the program has encountered in its all too brief operating history, the concept remains viable and needed to bring minority businesses into the mainstream of government procurement.

As a non-profit community service organization dedicated to securing equal opportunities for the poor and minorities in all sectors of society, the National Urban League recognizes the tremendous potential in this program. Although the regular 8(a) program has begun to serve the distinct needs of socially and economically disadvantaged small businesses, the pilot program adds a dimension that is essential to ensure that small businesses have access to the full range of government contracts. The "voluntary" nature of the regular 8(a) effort serves to limit the opportunities available to otherwise capable firms. Allowing the SBA to select what it deems to be viable requirements will provide assistance to small businesses that might otherwise be overlooked. Although black businesses are just beginning to break out of their traditional service mold, there are minority firms that are willing and able to compete in the emerging high technology field. These businesses must not be excluded

from exploiting this trend, but rather should be encouraged and assisted in its development.

Obviously, small and minority firms are suffering disproportionately during these difficult times. Although the pilot program cannot directly address those problems caused by the vagaries of the economy, it can temper some of the worst effects while attending to some of the more traditional difficulties these businesses face. Under the guidance of the SBA, eligible firms will gain management expertise and general business know-how, often identified as major deficiencies. A further impediment to the flourishing of these businesses is surely the persistent reality of discrimination. Although the 8(a) program does not address this directly, it may begin to erase the misconceptions that constrain minority businesses.

It is unfortunate that in its initial phase the pilot program was not in operation long enough to accurately gauge its effectiveness, and that it suffered from conflicting objectives. Yet, this is certainly no reason to abort the effort; problems are almost unavoidable in any novel and experimental action. In fact, it seems that much has been learned from this experience. The SBA's pledge to review and restructure its own internal operations, coupled with the selection of an appropriate procuring agency will go a long way toward solving some of the initial difficulties. With a clear and consistent purpose, streamlined procedures within SBA, and a strong commitment from the participating agency, the program can succeed.

Given the difficulties that the socially and economically disadvantaged small firm encounters, it is not sufficient to rely on voluntary efforts of Federal departments as provided for in the regular 8(a) program. An assured partnership between a specific agency and the Small Business Administration is essential to guarantee that small and minority businesses have access to a full range of contracts. Further, the pilot nature of the program will allow all those concerned to evaluate its effectiveness and make changes if deemed necessary. The National Urban League stands ready to assist you and the members of the Committee as deliberations proceed on the continuance of this program.

Sincerely,

MAUDINE R. COOPER
Vice President.

**STATEMENT OF HON. JAMES C. SANDERS, ADMINISTRATOR,
SMALL BUSINESS ADMINISTRATION, WASHINGTON, D.C., AC-
COMPANIED BY ROBERT F. McDERMOTT, ASSOCIATE ADMINIS-
TRATOR, PROCUREMENT AND TECHNICAL ASSISTANCE; AND
ROBERT L. WRIGHT, ASSOCIATE ADMINISTRATOR, MINORITY
SMALL BUSINESS, SBA**

Mr. SANDERS. Fine, Senator.

Mr. Chairman, I am pleased to appear before the committee to discuss my views on two bills that you have introduced. The first is S. 272, which would improve small business access to Federal procurement. The second is S. 273, to extend for 18 months the authorization for the 8(a) pilot procurement program.

In the interest of time, Senator, I would suggest that, if you will, I will pass up the detailed background, which you very competently covered, for S. 272, and I'll start with my statement at the bottom of page 7.

Senator PRESSLER. Your written statement in its entirety will appear in the record following your oral presentation.

Mr. SANDERS. As you know, during the 97th Congress the administration opposed this legislation because it was felt it was not needed and that current Federal procurement regulations and the Defense acquisition regulations, if properly adhered to, would be the best approach to take rather than additional legislation. SBA endorsed this approach at that time, and in general continues to do so.

However, we continue to be very concerned that small businesses too often have neither received sufficient notice of the availability

of procurements nor sufficient time for the preparation of bids. The Small Business Act clearly states that procurements be made available for small business, but such businesses cannot be meaningfully involved in the procurement process if they do not have notice of the availability of and time to bid on such contracts.

Therefore, we will continue to evaluate our position with regard to legislative solutions which might effectively address the committee's and the administration's concerns. However, our deliberations will include achieving administrative solutions to these problems. We will be happy to work with the committee as these deliberations go forward.

In connection with S. 273, the 8(a) pilot procurement program, I would like to say that the authority for the experimental 8(a) pilot procurement program is contained in Public Law 95-507, section 8(a)(1)(B) of the Small Business Act which was signed into law on October 24, 1978. The law allows the SBA to reserve procurement contracts for eligible 8(a) firms from a Federal agency designated by the President.

In January 1979, the President designated the Department of the Army as the agency to participate with SBA under this authority. In 1980 the program was extended for another year. The program's authorization expired on September 30, 1981. S. 273 would extend the authorization for 18 months from the date of enactment, with one change from the previous program. The bill specifies that the President is to designate a non-Defense agency for participation.

The concept behind the pilot program is to test whether SBA can accelerate the development of 8(a) concerns by awarding nontraditional, technically sophisticated, high-volume, long-term contracts. Additionally, the pilot program will enable us to determine whether providing SBA the authority to select contracts is a viable way of modifying the procurement practices of Federal agencies with respect to minority firms. It will also give SBA the opportunity to demonstrate that 8(a) concerns can, with targeted SBA assistance, overcome specific impediments that would prevent these concerns from successfully completing more difficult projects.

The administration supports the passage of S. 273, just as we supported passage of S. 1620 last year. I am committed to insuring it receives a fair test and evaluation. However, other things must be taken into consideration within the context of our overall goals of increasing total access to Federal procurement dollars through 8(a) programs.

I start with the belief that our most important concern in this area has to be the overall direction of the 8(a) program and its participants to insure continued and increased business development assistance. I do not want to do anything through this pilot program that would affect our ability to administer the overall program and provide the greatest assistance to the largest number of firms. The agency's resources currently devoted to 8(a) are already being fully utilized to improve the administration of this complex program.

The authority given SBA in the pilot program will not work if it is used as a club. I am concerned that pressures will cause our position to be used in that manner. For the 8(a) program to be successful, procuring agencies must be provided incentives to award 8(a) contracts in nontraditional areas. If this legislation is enacted, I

will endeavor to establish a cooperative relationship with the head of the designated agency necessary to insure a positive, rather than a contrary, experience.

Mr. Chairman, I support the goals of the pilot program—to provide higher volume and higher technology contracts. Let there be no doubt about that. As I said, I will do my best to see that this pilot concept, if enacted, is fully tested. I feel that I would be remiss if I did not share with you, however, our concerns.

On the portion of the bill relating to 8(a), section (2), Bond Waiver, Mr. Chairman, I would like to say that, in addition to the 8(a) pilot, I wish to provide the Small Business Administration's views on another expired provision of the law, and that is the 8(a) bond waiver. H.R. 4500, which passed the House last year, also included the 8(a) bond waiver provision.

Section 8(a)(2) of the Small Business Act gives the SBA Administrator temporary, discretionary, and conditional authority to declare inappropriate the bond requirement that a Federal contracting agency may have established for an 8(a) contractor. In effect, this gives SBA the authority to waive the bond requirement and assume all of the functions and obligations ordinarily performed by a commercial surety company.

The provision was temporary, having been enacted in October of 1978 as a 2-year pilot experiment with a sunset date of September 30, 1980. The provision was extended for 1 more year, until September 30, 1981.

The statute authorizes a bond waiver only if very explicit conditions are met. In the main, these are as follows:

One, the contractor is a start-up concern and has been in the 8(a) program for no more than 1 year.

Two, the contractor cannot obtain a surety bond even with SBA's surety bond guarantee.

Three, in the SBA's judgment the contractor has the capacity, with SBA assistance, to become bondable within a reasonable period of time.

Four, the SBA Administrator determines that the Federal contracting agency's bond requirement is inappropriate for the particular 8(a) contractor.

SBA recommends that the bond waiver provision not be included, and there are three principal reasons for our recommendation.

First, implementation would discriminate against users of the regular SBA surety bond guarantee program. Under this program, both the contractor and the surety company pay a fee to SBA in exchange for a surety bond guarantee, usually 80 to 90 percent of the amount of the surety company's losses. In contrast, the bond waiver provision would provide a 100-percent guarantee with no fee requirement.

Second, successful operation of a surety program requires the evaluative skills and judgment of commercial surety companies coupled with information about the past experience of the contractor. For SBA surety bond personnel to both take on the surety's responsibility and at the same time exercise that responsibility in more difficult circumstances, on contractors with little or no experience, would make it difficult to achieve high program operating

standards and also be disruptive to the regular surety bond program.

Finally, a bond waiver would provide little or no long-term benefit to an 8(a) contractor. The purpose of the surety bonding process is to "prequalify" a firm. A firm that is fully bondable in the private surety bond market is assumed to be "prequalified" for purposes of bidding on contracts. But even if an 8(a) firm should satisfactorily perform a contract under a bond waiver program, it still would have no track record in the private sector surety bond market.

For these reasons, Mr. Chairman, we recommend against further extension of section 8(a)(2).

Mr. Chairman, this concludes my prepared statement. I will be pleased to answer any questions the committee may have.

Senator PRESSLER. The feeling against the bill is based, as I understand it, on the fact it would create more paperwork or bureaucracy as far as S. 272 is concerned? Is that the position of the Small Business Administration?

Mr. SANDERS. On bond waiver?

Senator PRESSLER. No; on the first bill, S. 272.

Mr. SANDERS. We feel that—I think we agree with the necessity of improving the performance of notice. To that sense, I think we support in substance what this bill is trying to accomplish, but we still feel that all of the administrative attempts or resources have not been exhausted. We have, of course, talked with the OFPP on this matter.

As the statement indicates, Senator, we would like to work with the committee as the legislative agenda unfolds and be fluid about this, and see if some conditions are changed so that the effects of existing regulations are enforced, in which case we would be in one position; whereas, if they continue not to be enforced, I think that we would be very supportive of this, all parts of this bill.

Senator PRESSLER. If the bill did come into effect, would that put an onerous burden on you?

Mr. SANDERS. I do not think so.

Senator PRESSLER. Your opposition to it is not very strong? You would rather handle it administratively?

Mr. SANDERS. That's right. I do not think that we would want to be—I want to make it clear that we are not in opposition to the effects of this bill.

Senator PRESSLER. However, are you in opposition to the bill?

Mr. SANDERS. No. I think we are only stating that we would like to continue to work with several of the agencies in an administrative situation until, between ourselves, we establish to our satisfaction that it cannot work the way it is. We have to give them a little time, we feel, to come around and be convinced that what we have been doing in the past 12 months, or 9 months, has not changed anything.

Senator PRESSLER. What kind of a timeframe do you see this happening in?

Mr. SANDERS. I would hope that we would have a clear-cut statement on this bill, I would think, Senator, before you mark this up or get it onto the floor for passage. I would think within 60 days is probably reasonable.

The CHAIRMAN. It is my understanding that this bill is going to the floor in the next 24 hours, so I think we can throw the 60 days out the window. We had better get our heads together and iron it out pretty fast.

Senator Huddleston?

Senator HUDDLESTON. There is just one area that has concerned me a little bit, and I think Senator Boschwitz may want to offer an amendment. On the second page, line 7, the bill addresses the exceptions for notices. It states, "which only foreign sources are to be solicited." There is no indication as to what kind of determination has to be made as to the circumstances in which only foreign sources are to be solicited. Our interest is to make sure that domestic producers are at least on an equal footing. The thought is that we ought to require some kind of a showing, or some kind of a determination, that at least an effort has been made to find out whether domestic sources are available and are willing, able, and desirous of being considered.

I think Senator Boschwitz' amendment would just strike that exemption entirely.

What are your views on that particular provision? It occurs to me that might be a standardized piece of language there.

Mr. SANDERS. I would like to defer to our Associate Administrator in charge of procurement, Mr. McDermott, to give some thoughts on that.

Senator HUDDLESTON. Fine.

Mr. McDERMOTT. Senator, I would agree with the amendment which, in fact, strikes that. It is not only that domestic sources perhaps should have a chance to see what is being proposed to be bought from foreign sources, but I think within the past 20 years, since the time that these exemptions were established, small businesses have become sophisticated enough in many areas that they can compete with foreign sources. It would be my recommendation that that be stricken.

Senator HUDDLESTON. Fine.

That is the only question I have, Mr. Chairman.

The CHAIRMAN. Senator Rudman?

Senator RUDMAN. No questions.

The CHAIRMAN. Senator Kasten?

Senator KASTEN. Is markup going to occur today on this bill? At that time will the Boschwitz amendment be offered?

The CHAIRMAN. It is my intention to move right from the testimony to the markup.

Senator KASTEN. I have no questions.

The CHAIRMAN. I have questions which I will submit for response in the record.

[Subsequent information was received and follows:]

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LOWELL WEICKER, JR., CONG. CHAIRMAN
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ALAN L. GORTON, MINORITY STAFF COUNSEL

United States Senate
COMMITTEE ON SMALL BUSINESS
WASHINGTON, D.C. 20510

February 3, 1983


Honorable James C. Sanders
Administrator
Small Business Administration
1441 L Street, N.W.
Washington, D.C. 20416

Dear Mr. Sanders:

Following the Senate Small Business Committee hearing on S. 272 and S. 273 on February 2, 1983, I have enclosed some questions for the record from Members of the Committee.

Your timely response will be appreciated.

Sincerely,


LOWELL WEICKER, Jr.
Chairman

Enclosure (Omitted.)

RECEIVED
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OFFICE OF THE
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QUESTIONS FOR ADMINISTRATOR SANDERS

Question 1.

Do you believe that the present CBD is a useful tool for small firms interested in doing business with the government? Do you have any agency suggestions, or have you received any small business recommendations, for improvements in the CBD?

Answer: Yes. One of the greatest complaints from small business to the use of the Commerce Business Daily (CBD) as a tool for learning of government requirements is the timeliness of publication and distribution. Therefore, a major improvement that could be made would be to eliminate the use of the mail system, both for transmission to the point of publication and subsequent distribution of the publication, which generally is by Second Class Mail. Institute a requirement that all material be electronically transmitted to the point of publication, and then the publication be electronically transmitted to several distribution points throughout the country. For example, small firms on the West Coast would receive the CBD in less time than the several days it now takes for mail distribution from the point of publication to the Western United States.

Question 2.

Currently section 8(e) of the Small Business Act provides that agencies can determine in writing that advance publication is not reasonable or appropriate after consultation with the Administrator of the SBA. To the best of your knowledge, how often do procuring agencies consult with the SBA and then claim this exemption?

Answer: To the best of our knowledge there have been four requests for waivers from synopses during the last ten years.

Question 3.

Can you support the provision of S. 272 that requires 30 days for the bidding process?

(On June 23, 1981, in answer to Congressman LaFalce, SBA Administrator Cardenas responded for the record that the agency supports a 30 day period between synopsis and bid closing.)

If not, who or what has caused the agency to change its views on this issue?

Page 2

Answer: Yes. We continue to support the 30 day period between synopsis and bid opening.

Question 4.

What is your view of increasing the statutory threshold for advertising upcoming civilian agency procurements from the current level of \$5,000 to \$10,000 or \$25,000?

What impact might such an increase have on increasing opportunities for small business government contractors?

Answer: The proposed Uniform Procurement System establishes the threshold for synopses for all agency procurements at the \$10,000 level. Due to inflationary factors and other factors which have affected the dollar value of procurements, we do not believe that raising the civilian agency synopses level to that of \$10,000 will have a negative impact on small business government contracting.

Question 5.

What is your opinion of exempting 8(a) and SBIR awards from the Bill's requirement for an agency head to approve sole-source negotiations over \$100,000?

Answer: In view of the special aspects of both the 8(a) and SBIR programs, we believe that they should be exempted from the sole-source approval requirement.

Question 6.

In your opinion, can the minimum time requirements proposed in S. 272 be easily incorporated into existing time frames required by regulation? If not, why not?

Answer: Yes.

Question 7.

What enforcement mechanisms, if any, are currently available to ensure that agencies adhere to the existing time limits currently spelled out in regulations?

Answer: Basically none.

Question 1.

Do you think there is a suitable non-defense agency which can be designated for the pilot authority?

Answer:

Yes, there are a number of non-defense agencies that would be suitable to serve as the participant in the proposed Pilot Program. Attached is a list of civilian agencies that could possibly meet the procurement volume, mix and applicability criteria necessary to provide programmatic success.

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HIGH TECHNOLOGY CONTRACT OPPORTUNITIES IN NON-DEFENSE FEDERAL AGENCIES - FY 1980

(Dollars in Thousands)

	NASA	Dept of Energy	Dept. of Health & Human Services	Dept. of Transp.	EPA	Dept. of Interior	Veterans Admin.	AID
1) Research & Development	\$2,438,476	\$1,341,078	\$ 515,182	\$ 146,465	\$ 226,553	\$ 128,501	\$ 3,603	\$ 4,263
2) Data Processing	34,200	4,526	26,181	18,030	337	11,818	3,889	Not rptd.
3) Communications Equip.	17,949	Not rptd.	151	126,017	36	2,023	7,241	37
4) Electronic Equipment	10,816	1,887	60	6,853	Not rptd.	984	130	Not rptd
5) Special Industry Mach.	1,335	36,688	34	518	1,491	283	620	Not rptd
6) Instruments & Lab. Equipt.	29,413	1,914	6,557	28,476	5,678	8,442	8,481	441
7) Medical & Dental Equipt.	457	85	-0-	29	77	Not rptd.	190,197	Not rptd
8) Professional & Technical Services	524,196	606,303	220,209	191,415	87,924	125,096	47,972	195,430
TOTAL FOR HIGH TECHNOLOGY CATEGORIES (Sum of 1-8)	\$3,212,239	\$1,992,481	\$ 722,033	\$ 504,097	\$ 322,096	\$ 277,147	\$ 262,233	\$200,134
TOTAL PROCUREMENT BUDGET FY 1980	\$4,461,444	\$8,051,491	\$1,538,554	\$1,400,676	\$ 407,738	\$1,795,442	\$2,227,587	\$243,241

Source: Federal Procurement Data Center
Figures for FY 1980 for Contracts over \$10,000

The Chairman. The witnesses are excused.
Mr. SANDERS. Thank you, Mr. Chairman.
[The prepared statement of Mr. Sanders follows:]

STATEMENT OF JAMES C. SANDERS, ADMINISTRATOR, SMALL BUSINESS ADMINISTRATION

Mr. Chairman and members of the committee, I am pleased to appear before the Committee on Small Business to discuss my views on two bills that you have introduced, Mr. Chairman. The first is S. 272, which would improve small business access to Federal procurement. The second is S. 273, to extend for 18 months the authorization for the 8(a) pilot procurement program.

S. 272: COMMERCE BUSINESS DAILY

I would like to address now S. 272 which is identical to S. 1947 as passed by the Senate in the 97th Congress.

This bill would amend Section 8(e) of the Small Business Act by providing that whenever a procuring agency is required by that section to publish a notice of procurement action, it may not issue the solicitation for procurement action until at least 15 days have elapsed from the date of publication of a proper notice, except where the solicitation will be for procurement of requirements classified as research or development effort, in which case the period is forty-five days. Other requirements of the bill would be to allow all solicitations a minimum bidding time of 30 days. It also provides that no orders against existing basic ordering agreement contracts can be placed until 30 days have elapsed. Negotiations are prohibited for the award of a sole source contract until 30 days have elapsed from the publication of a proper notice of intent to contract.

As we all know, the U.S. Government is the world's largest buyer of goods and services. Purchases by military and civilian installations amount to about \$175 billion a year, ranging from complex space vehicles to paper clips, janitorial services to cancer research. In short Mr. Chairman, the Government buys just about every category of commodities and services available.

The Small Business Act has placed the responsibility on the SBA for making certain that small business obtains a fair share of government contracts and subcontracts. SBA, working closely with Federal procuring agencies and the nation's leading contractors, carries out this responsibility through a number of avenues.

One of those avenues is Section 8(e) of the Small Business Act. This section, adopted in 1961, requires the Secretary of Commerce to publish a listing of all proposed procurement actions over \$5,000 for civilian agencies, and \$10,000 for military procurements.

Thousands of contracts worth millions of dollars each year bypass small firms that do not know of or understand Government buying and selling. One common and constant complaint we receive from small businesses is the poor timing of solicitation notices published in the Commerce Business Daily (CBD). The CBD provides a list of proposed Government purchases, subcontracting leads, contract awards, sales of surplus property and foreign business opportunities. Proposed purchases that are to be made exclusively from small firms are identified on this list.

Currently, whenever a Federal agency is required to publish a notice of a procurement action in the CBD, Federal acquisition regulations provide that agencies "should, when feasible, synopsise proposed procurements no later than ten days before the issuance of solicitations." The proposed legislation would, first, establish a requirement for pre-solicitation synopsis of each proposed procurement. It also would increase the pre-solicitation synopsis time-frame to 15 days. Also, current regulations provide for a minimum bidding time of 20 calendar days, whereas S. 272 would require at least 30 days from the issuance of a solicitation before a bid is opened.

Federal procuring agencies, even now, where currently the minimum requirements for CBD synopsizing are "not later than date solicitation is issued," and where solicitation time (from issuance to closing) is "more than 15 calendar days," do not always comply. SBA surveillance reviews have consistently revealed over the years substantial noncompliance by contracting officers with regulatory CBD synopsizing guidance. These findings are reported to Federal Procuring Agency heads. This continuing problem still remains with us today.

Advance synopsis, prior to solicitation issuance, helps to identify those firms interested in competing for specific procurements. Additionally, measurable administrative cost savings could be realized by the Government, as interested firms for individual procurements would be known to the contracting office prior to initial issuance.

ance of the solicitation. This would help to preclude the necessity for receiving and processing individual requests for bid package after the initial mailing and would also reduce printing costs by knowing the number of interested sources. This would reduce the necessity to reproduce extra sets for "potential" write-in requests after solicitation issuance.

An extended timeframe could allow small, as well as large, businesses the opportunity to "shop" subcontractors offering the best prices, quality and delivery capability. This will result in overall lower prime contract bid prices and increase the occasions of more timely delivery of required supplies and services.

This could considerably reduce bid and proposal "mistakes" by all firms through unduly hurried preparation of bid prices and technical proposals, which are very time-consuming and costly to both the contractors and procuring agencies. Frequently this delays contract completion (delivery of needed supplies and services) with the attendant costs, direct and indirect, to both contracting parties. Fewer bidding errors would clearly have a very favorable ripple effect in areas such as:

(1) mistakes-in-bid allegations and processing, both before and after contract award; (2) bid protest cases to Federal agencies and the Comptroller General; (3) Boards of Contract Appeal cases; (4) formal "disputes" cases, Court of Claims cases; as well as; and (5) Delinquencies on contract deliveries and, therefore, default terminations and reprocurement actions.

All of these items are extremely costly to procurement and, primarily, contract administration functions which are attributed, all too often, to insufficient proposal preparation time.

Many reputable and capable businesses, small as well as large, are reluctant and, in fact, refuse to participate in Federal procurements simply because sufficient time is not now being allowed by procuring agencies for prospective bidders to properly develop proposals (price or technical). In addition to increased competition, which should bring about better or lower prices for the Government, an expanded industrial base to supply Federal needs for supplies and services is an all-important benefit to be pursued.

Federal agencies' failure to allow sufficient time for firms to develop sound price and technical proposals, have been the source of chronic complaints from small businesses to the SBA, for many years. Despite reported and continuing efforts by SBA Central Office (thru, e.g., surveillance reviews/reporting to Agency heads) and field PCRs to bring about improvement, these problems still remain.

Last Congress, Mr. Chairman, this Committee conducted a hearing on this legislation on the West coast. It is my understanding that all of the small business witnesses who testified were in agreement that there is a definite need for an extension of the filing time.

As you know, during the 97th Congress the Administration opposed this legislation because it was felt it was not needed and that current Federal procurement regulations and the Defense Acquisition Regulations (DAR), if properly adhered to, would be the best approach to take rather than additional legislation. SBA endorsed this approach at that time, and in general continues to do so.

However, we continue to be very concerned, Mr. Chairman, that small businesses too often have neither received sufficient notice of the availability of procurements nor sufficient time for the preparation of bids. The Small Business Act clearly states that procurements be made available for small business, but such businesses cannot be meaningfully involved in the procurement process if they do not have notice of the availability of, and time to bid on such contracts. Therefore, we will continue to evaluate our position with regard to legislative solutions which might effectively address the Committee's and the Administration's concerns. However, our deliberations will include achieving administrative solutions to these problems. We will be happy to work with the Committee as these deliberations go forward.

S. 273: 8(A) PILOT PROCUREMENT PROGRAM

The authority for the Experimental 8(A) pilot procurement program is contained in Public Law 95-507 Section 8(A)(1)(B) of the Small Business Act which was signed into law on October 24, 1978. The law allows SBA to reserve procurement contracts for eligible 8(A) firms from a Federal agency designated by the President.

In January 1979, the President designated the Department of the Army as the agency to participate with SBA under this authority. In 1980 the program was extended for another year. The program's authorization expired on September 30, 1981. S. 273 would extend the authorization for 18 months from the date of enactment, with one change from the previous program. The bill specifies that the President is to designate a non-Defense agency for participation.

The concept behind the pilot program is to test whether SBA can accelerate the development of 8(a) concerns by awarding non-traditional, technically sophisticated, high volume, long-term contracts. Additionally, the pilot program will enable us to determine whether providing SBA the authority to select contracts is a viable way of modifying the procurement practices of Federal agencies with respect to minority firms. It will also give SBA the opportunity to demonstrate that 8(a) concerns can—with targeted SBA assistance—overcome specific impediments that would prevent these concerns from successfully completing more difficult projects.

The Administration supports passage of S. 273, just as we supported passage of S. 1620 last year. I am committed to ensuring it receives a fair test and evaluation. However, other things must be taken into consideration within the context of our overall goals of increasing total access to Federal procurement dollars through the 8(a) program. I start with the belief that our most important concern in this area has to be the overall direction of the 8(a) program and its participants to ensure continued and increased business development assistance. I do not want to do anything through this pilot program that would affect our ability to administer the overall program and provide the greatest assistance to the largest number of firms. The Agency's resources currently devoted to 8(a) are already being fully utilized to improve the administration of this complex program.

The authority given SBA in the pilot program will not work if it is used as a club. I am concerned that pressures will cause our position to be used in that manner. For the 8(a) program to be successful, procuring agencies must be provided incentives to award 8(a) contracts in non-traditional areas. If this legislation is enacted, I will endeavor to establish a cooperative relationship with the head of the designated agency necessary to ensure a positive rather than contrary experience.

Mr. Chairman, I support the goals of the pilot program—to provide higher volume and higher technology contracts. Let there be no doubt about that. As I said, I will do my best to see that this pilot concept, if enacted, is fully tested. But I feel that I would be remiss if I did not share with you our personal concerns.

8(A)(2) BOND WAIVER

Mr. Chairman, in addition to the 8(a) pilot, I wish to provide the Small Business Administration's views on another expired provision of law, the 8(a) bond waiver. H.R. 4500, which passed the House last year, included the 8(a) bond waiver provision.

Section 8(a)(2) of the Small Business Act gives the SBA Administrator temporary, discretionary, and conditional authority to declare inappropriate the bond requirement that a Federal contracting agency may have established for an 8(a) contractor. In effect, this gives SBA the authority to waive the bond requirement and assume all of the functions and obligations ordinarily performed by a commercial surety company.

The provision was temporary, having been enacted first on October 24, 1978, as a two-year pilot experiment, with a "sunset" date of September 30, 1980. The provision was extended for one additional year, until September 30, 1981.

The statute authorizes a bond waiver only if very explicit conditions are met. In the main these are as follows:

The contractor is a start-up concern and has been in the 8(a) program for no more than one year.

The contractor cannot obtain a surety bond even with SBA's surety bond guarantee.

In SBA's judgment, the contractor has the capacity, with SBA assistance, to become bondable within a reasonable period of time.

The SBA Administrator determines that the Federal contracting agency's bond requirement is inappropriate for the particular 8(a) contractor.

SBA recommends that the bond waiver provision not be included and there are three principal reasons for our recommendation.

First, implementation would discriminate against users of the regular SBA surety bond guarantee program. Under this program, both the contractor and the surety company pay a fee to SBA in exchange for a surety bond guarantee, usually 80 to 90 percent of the amount of the surety company's losses. In contrast, the bond waiver provision would provide a 100 percent guarantee with no fee requirement.

Secondly, successful operation of a surety program requires the evaluative skills and judgment of commercial surety companies coupled with information about the past experience of the contractor. For SBA surety bond personnel to both take on the surety's responsibility and at the same time exercise that responsibility in more difficult circumstances—on contractors with little or no experience—would make it

difficult to achieve high program operating standards and also be disruptive to the regular surety bond program.

Finally, a bond waiver would provide little or no long term benefit to an 8(a) contractor. The purpose of the surety bonding process is to "prequalify" a firm. A firm that is fully bondable in the private surety bond market is assumed to be "prequalified" for purposes of bidding on contracts. But even if an 8(a) firm should satisfactorily perform a contract under a bond waiver program, it still would have no track record in the private sector surety bond market.

For these reasons, Mr. Chairman, we recommend against further extension of Section 8(a)(2).

Mr. Chairman, this concludes my prepared statement. I will be pleased to answer any questions the Committee may have.

The CHAIRMAN. Mr. Rosen, why don't you proceed? Also, why don't you introduce those persons who have accompanied you to the witness table?

STATEMENT OF ALAN L. ROSEN, PRESIDENT, ROSCO AUTOMOTIVE INTERNATIONAL CORP., ACCOMPANIED BY LYDIA BASHWINER, EXECUTIVE DIRECTOR, NATIONAL SMALL BUSINESS GOVERNMENT CONTRACTORS ASSOCIATION; AND JOSEPH J. PETRILLO, ATTORNEY FOR THE NATIONAL ASSOCIATION OF AIRCRAFT & COMMUNICATION SUPPLIERS, INC.

Mr. ROSEN. I would like to introduce Lydia Bashwiner, the executive director of the National Small Business Government Contractors Association, and Joseph Petrillo, an attorney for the National Association of Aircraft & Communication Suppliers.

My name is Alan Rosen, and I am president of Rosco Automotive International Corp. of Columbus, Ohio, a member of the National Small Business Government Contractors Association and a manufacturer and supplier of military spare parts. I am a trustee of the association.

I wish to thank the committee for inviting me to speak today on the Commerce Business Daily legislation to improve it.

I have been a regular reader of the Commerce Business Daily for many years. It is important for you to realize how dependent small business is on a timely and adequate Commerce Business Daily. As you know, there are many Government procurement agencies, military and civilian, scattered throughout the country. It is impractical for us to have representation on all these sites. Therefore, we must rely heavily on the Commerce Business Daily to learn of contracting opportunities.

Small business is not the only beneficiary of the Commerce Business Daily. The Defense Department and other agencies are able to obtain competition because of publicity in the the Commerce Business Daily. That competition translates directly into lower prices. Thus, the public reaps the ultimate benefit in the form of lower procurement prices.

The great majority of Government procurements for military spares are made with inadequate competition or without any competition at all. When competition is introduced—generally by small business—there are demonstrated cost savings of over 35 percent. Thus, many millions of dollars are at stake.

Effective publicity means more contracts for small business and more cost savings for the Government. But there is much room for improvement in the Commerce Business Daily.

The primary problem is timeliness. Current regulations give only 10 days between the date of publication and the issuance of a solicitation. And all too often agencies do not observe these regulations.

In the past, the total period for submitting offers has often averaged only about 21 days from the date of publication in the Commerce Business Daily. However, very many things must happen in that short period:

First, we must receive the Commerce Business Daily by mail from Chicago.

We must then review the Commerce Business Daily for the items that we may be interested in.

Then we must request bidding documents from the procuring agencies by mail. There is little we can do until we receive these documents from the agencies, again by mail.

When we receive the documents, we must research the item, review data requirements, and obtain needed specifications and other information. If we decide we can supply the part, we must compute a price, propose a delivery schedule, and fill out all the necessary Government forms.

The final step is to transmit our offer to the agency in sufficient time to arrive by the deadline.

Thus, the time for bid submission often shrinks to 2 or 3 days, during which we must make all necessary technical and business decisions. We pride ourselves on a quick response time, but frequently 2 or 3 days just isn't enough time. When agencies don't comply with the time periods in the regulations, we are completely precluded from competing.

Timeliness is the No. 1 problem small businesses have with the Commerce Business Daily. We suggest that the following minimum time periods be established by legislation: 15 days from publication to request bidding documents and 30 days to submit offers. Of course, procurements which are truly urgent should be exempt.

In the last Congress, S. 1947 would have adopted these time limits. Another bill, S. 2127, would have provided 30 days, rather than 45 days, total bidding time. Although 30 days is enough in some instances, 45 days is a more reasonable period, given all which must occur before a bid is submitted.

Another aspect of last year's bills deserves special mention. S. 1947 would have retained the current thresholds for synopsis in the CBD. These are \$10,000 for military procurements and \$5,000 for civilian procurements. S. 2127, however, would have increased this threshold to \$25,000.

Many small businesses are heavily dependent on these smaller orders. Raising the existing thresholds would effectively cut them out of a large portion of their existing business. I note that the final proposal of OMB's Office of Federal Procurement Policy would not have brought the threshold over \$10,000. I urge the committee to retain the dollar thresholds for synopsis in existing law.

A matter which also deserves consideration is the basic ordering agreement, or BOA. Many purchases of spare parts are made from large business orders issued under these annual arrangements. These orders are "sole source"—made without any competition at all.

Here the Commerce Business Daily is especially inadequate. Although regulations require that orders under BOA's be published in the Commerce Business Daily, many agencies routinely fail to do so. Even when proposed orders are published, the regulations are applied to give only 10 days between publication and the issuance of the order. Thus, only 10 days after the Commerce Business Daily is sent from Chicago, all competition is precluded.

The BOA, which was adopted for administrative convenience, has become a device which can be abused to eliminate competition. Publication in the Commerce Business Daily can bring this practice to an end. Therefore, I support a 30-day time limit for BOA's.

Problems with the Commerce Business Daily do not end with timeliness, however. Some procurements sent to the Commerce Business Daily offices are never published. Apparently this is because of lack of space, but I find this practice very inexcusable. We pay \$130 per year for our subscription to Commerce Business Daily. We would gladly pay more for a complete and useful publication to help all of us, and I am sure that almost all small businesses would agree with me.

In addition, synopses in the Commerce Business Daily are sometimes incomplete. They may not describe fully what is being bought or whom to contact in the agency for information and bidding documents. Such defects can be overcome by making inquiries, but this takes valuable time.

If these suggested time periods become law, proper implementation can insure that the procurement process is not any longer than it is now. Advance planning by agencies would permit publication in the Commerce Business Daily early enough to avoid delay in the procurement cycle. Surely, agencies ought to know what they are going to buy 45 days before they are in a position to award a contract.

Thank you for the opportunity to testify. I would be happy to answer your questions.

The CHAIRMAN. Senator Rudman?

Senator RUDMAN. I have no questions.

The CHAIRMAN. Senator Huddleston?

Senator HUDDLESTON. I have no questions.

The CHAIRMAN. Given your own experiences with the publication, how often do you find that a procurement notice is printed in the Commerce Business Daily beyond the time when you can reasonably act on it?

Mr. ROSEN. We look at them daily. I would say 50 percent of the time.

The CHAIRMAN. If you were given adequate time, would your firm respond to more Federal procurement notices?

Mr. ROSEN. Yes, sir.

The CHAIRMAN. Currently, there are 10 justifications that allow a Federal agency to not publish procurement notices in the Commerce Business Daily. Do you believe that if the time limits required by S. 272 were passed it would encourage agencies to seek a greater number of exemptions from advertising in the CBD?

Mr. ROSEN. It would maximize competition, and I think the 10 exemptions are adequate.

The CHAIRMAN. In your opinion is the Commerce Business Daily the best possible publication available to the procurement community? Does it adequately serve the needs of the small business sectors of that community?

Mr. ROSEN. Not as it is currently written.

The CHAIRMAN. What specific suggestions would you have?

Mr. ROSEN. I think we need more time to maximize the competition. That is the No. 1 goal. It would lower procurement prices, and it would save taxpayers dollars.

The CHAIRMAN. Therefore, time is the big factor?

Mr. ROSEN. Time is the big factor.

The CHAIRMAN. I have no further questions.

Thank you very much.

Mr. ROSEN. Thank you.

[The prepared statement of Mr. Rosen follows:]

STATEMENT OF ALAN L. ROSEN

My name is Alan L. Rosen and I am president of Rosco Automotive International Corporation, of Columbus, Ohio. Rosco Automotive is a member of the National Small Business Government Contractors Association, and a manufacturer and supplier of military spare parts. I am a trustee of the association.

I wish to thank this committee for inviting me to speak today on the Commerce Business Daily and legislation to improve it.

I have been a regular reader of the Commerce Business Daily for many years. It is important for you to realize how dependent small business is on a timely and adequate Commerce Business Daily.

As you know, there are many government procurement agencies, military and civilian, scattered throughout the country. It is not practical or economical for us—or any small business—to have on-site representation at all these buying offices. Therefore, we rely heavily on the Commerce Business Daily to learn of contracting opportunities.

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2. We must then review the Commerce Business Daily for items we may be interested in.
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4. There is little we can do until we receive the documents from the agency, again by mail.
5. When we receive the documents, we must research the item, review data requirements and obtain needed specifications and other information. If we decide we can supply the part, we must compute a price, propose a delivery schedule, and fill out all necessary government forms.
6. The final step is to transmit our offer to the agency in sufficient time to arrive by the deadline.

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selves on a quick response time, but frequently two or three days just isn't enough. And when agencies don't comply with the time periods in the regulations, we are completely precluded from competing.

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Thank you for the opportunity to testify. I would be happy to answer your questions.

The CHAIRMAN. Mr. Paul Browne of the National Association of Minority Contractors is our next witness.

Mr. Browne, why don't you proceed with your statement?

STATEMENT OF PAUL R. BROWNE, DIRECTOR OF BUSINESS DEVELOPMENT AND PROCUREMENT, NATIONAL ASSOCIATION OF MINORITY CONTRACTORS

Mr. BROWNE. Thank you, Mr. Chairman.

Our executive director, Mr. Dewey Thomas, had an emergency and was not able to be here. He sends his apologies to you and your committee.

He has prepared a statement, and I will submit it for the record. However, in the furtherance of time, I will summarize Mr. Thomas' statement, if you wish.

The CHAIRMAN. The statement in its entirety will be placed in the record at this point.

[The prepared statement of Mr. Thomas follows:]

STATEMENT OF DEWEY THOMAS, JR., EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF MINORITY CONTRACTORS

Mr. Chairman and members of this committee, Mr. Chairman, on behalf of our national membership, it is a pleasure to appear before you this morning to discuss Senate Bill S. 273, the Minority Small Business Pilot Procurement Act of 1983—a bill to reauthorize the SBA's section 8(a) Pilot Procurement Program.

Mr. Chairman, in behalf of our national membership, I wish to personally commend you for your personal commitment to assist socially and economically disadvantaged businesses by the introduction of S. 1620—which called for an extension of the 8(a) pilot authority for an additional 18 months in a civilian agency in order to more fully test the concept of the program. Unfortunately, the Senate did not consider this bill during the 97th Congress. Your introduction of S. 273 (which is identical to S. 1620) is to be applauded, and our association fully support your efforts and those of the committee for the passage of this important legislation.

The National Association of Minority Contractors is a non-profit, full service membership association with the following objectives:

- To act as a national spokesman for minority contractors relating to current and pending government regulations;

- To facilitate the training opportunities for minority contractors in the skilled crafts of the building industry;

- To assist in identifying and developing technical, educational, management and financial resources to aid minority contractors;

- To assist in identifying resources that will increase the capacity of minority contractors to procure and manage larger construction projects;

- To identify appropriate and viable assistance for minority builders in obtaining bonding, as well as actively initiating and developing alternative methods to meet bonding performance/payment requirements; and,

- To provide the strong leadership necessary to bring about industry parity for minority contractors.

BACKGROUND

Congress created the authority for the Pilot Procurement Program in Public Law 95-507, which was signed into law on October 24, 1978. On January 10, 1979, the Department of the Army was designated by the President as the agency to participate with SBA in the pilot procurement program. The authority for the program was extended through September 30, 1981, by Public Law 96-481, enacted on October 21, 1980.

We believe the purpose of the pilot program was to help SBA increase its ability to assist disadvantaged firms over and beyond what the agency was doing through the regular 8(a) program. Under the regular 8(a) program, a Federal agency "volunteers" contracts to SBA in behalf of eligible 8(a) firms, offering SBA those projects of construction, goods, or services that the Federal agency believes the 8(a) program should have or that the 8(a) firms can perform, rather than projects of construction, goods, or services that SBA believes the 8(a) firms could perform consistent with their business development. We believe congress created the pilot program to evaluate whether SBA could better control the flow of contracts from Federal agencies which would be more conducive to good business development of the 8(a) firms.

The National Association of Minority Contractors (NAMC) endorse and strongly recommend the reauthorization of the SBA's 8(a) pilot procurement program as proposed by S. 273, with the following recommendations:

- (1) Delete the change of wording proposed by S. 273, Section 8(a)(1), clause (B), first sentence: . . . "(other than the Department of Defense or any component thereof) as shall be designated by the President." and reinstate the wording: . . . "As shall be designated by the President within 60 days after the effective date of this paragraph,"

NAMC comment: We believe the DOD and its components should be one of the options of the President, along with civilian agencies, in view of the DOD annual domestic construction budget of approximately \$3 billion.

(2) NAMC recommends that S. 273 also include an extension of the surety bond provisions of Sec. 8(a)(2), P.L. 95-507, which also expired on September 30, 1981. This provision states in part: . . . "no small business concern shall be required to provide any amount of any bond as a condition of receiving any subcontract under this subsection if the administrator determines that such amount is inappropriate for such concern in performing such contract: . . ."

NAMC comment: There is a continuing and urgent need to assist socially and economically disadvantaged businesses with this kind of bonding assistance—especially for new start up businesses. We believe a well structured process for handling the request of local businessmen expeditiously will reveal a strong demand and utilization of this provision by SBA.

Mr. Chairman, according to our records, our NAMC membership has not had the opportunity in the past to participate in pilot projects awarded pursuant to the authority of P.L. 95-507, as extended by P.L. 96-481. We believe the enactment of S. 273, with our recommended revisions, would assure that the legislative objectives of Congress would be fully tested, and many of our members and social and economical businesses throughout the country would be afforded the opportunity to participate.

This concludes my prepared testimony, Mr. Chairman. If you or the members of this committee have any questions, I would be happy to answer them.

The CHAIRMAN. Mr. Browne, you may proceed in any manner you deem appropriate.

Mr. BROWNE. The National Association of Minority Contractors is a national association with approximately 2,500 construction firms as its members. We are a membership-sponsored organization. We are in over roughly 35 States in the country. Our constituency believes that with regard to S. 273 we fully support the committee's efforts, your efforts with S. 1620, which was not passed during the last session of Congress. We must applaud you, Mr. Chairman, for reintroducing that again, because we feel that it is essential, it is important, to help the firms participating in the 8(a) program.

I will go briefly to page No. 4 of the statement.

Mr. Thomas asked me to emphasize to the committee a concern with respect to S. 273, and that is the option that the President would have in naming DOD and its components as members of the pilot agency.

My previous experience with the SBA and its administration of the pilot program while at SBA, I had the opportunity to be in the trenches when that provision of Public Law 95-507 was put into practice. In spite of all the problems we had with the agency at that time and our own SBA, we still saw the valid need of testing the concept. We believe that the President should have that option again of naming DOD, if he so chooses. However, we still support your bill, too, that says a civilian agency should be tested.

Second, 8(a)(2)—

The CHAIRMAN. I think you understand why we did that. It was too easy just to use DOD.

Mr. BROWNE. Yes.

The CHAIRMAN. If we were to go ahead and have this done truly in a meaningful way across the broad spectrum of agencies, then it seemed to me we should go ahead with that type of change. It was not in any way trying to restrict the option of DOD. It was just the feeling that was where everything was going to end up.

Mr. BROWNE. I see, Mr. Chairman.

We see roughly about \$3 billion in construction within the Department of Defense, and we certainly would like to see the 8(a) firms, as well as other minorities, participate in that construction business.

With regard, Mr. Chairman, to section 8(a)(2), which is the surety bonding provision, we believe that extension of that provision of the law should go hand in hand with section 8(a)(1). We feel that in spite of the problems again in the administration of that, the lack of a specific fund within the SBA that would address that contingency, if it happened, that truly a testing of the provision has not yet occurred. If we have, we believe, a well-structured procedure at the local levels of SBA for taking the requests of small businesses, who certainly are in need of that, and passing that through the proper channels, you will see not only a demand, but you will see SBA I believe recognizing and utilizing that provision of the law. Therefore, we are advocating that that, too, be included in your bill, S. 273, to also be extended for another 18-month period.

If you have any questions, Mr. Chairman, I would be happy to answer them.

The CHAIRMAN. Senator Rudman?

Senator RUDMAN. I have no questions.

The CHAIRMAN. I have no questions.

Mr. BROWNE. Mr. Chairman, I would like to add one thing as an attachment to my statement. It is here. We did have one of our members participating as a pilot. We got a letter from his this morning. We have submitted it as an attachment to our statement. It is from Mr. Smoot of Smoot Construction. We simply submit that for the record.

The CHAIRMAN. All right. The letter from Mr. Smoot will be included in the record at this point.

[Material follows:]

THE SHERMAN R. SMOOT CO., INC.,
Columbus, Ohio, January 28, 1983.

Mr. DEWEY THOMAS,
Director, National Association of Minority Contractors, Washington, D.C.

DEAR DEWEY: Please be advised regarding the Small Business Administration 8(a) Pilot Program that The Sherman R. Smoot Company participated at Wright Patterson Air Force Base for the construction of the Flight Control Laboratory with a contract amount of \$9,533,713. This project is complete as of January 25, 1983, and it is very unfortunate that we do not have a similar project to which we can continue to advance in the construction field.

The Corps of Engineers, as well as the Air Force, has been very complimentary of our work and maintains that this is the best project constructed in the last 15 years at this site. The project was built within budget, within schedule, and any modifications to the contract or change orders were instituted by the Agency.

As a result of this pilot project, we, at The Smoot Company, have definitely gained additional skills and are somewhat more competitive today than we were a year and a half ago when this project started. It is very unfortunate that this program is not continuing and that it, too, has become a victim as apparently the 8(a) Program has—basically due to the greed of our majority contracting constituency.

Nevertheless, we will attempt to continue, but in the meantime, approximately \$400,000 in equipment will remain idle, and at least ten permanent jobs will be lost from our support staff. More importantly, at least 50 jobs for the construction industry will be lost because there are no projects of this magnitude available to The Smoot Company in the public sector, and, of course, we all know that the exclusionary tactics of the private sector allow no contracts whatsoever.

We hope this information is useful to you regarding the outlook of The Smoot Company as you go forth to voice our concerns before Senator Weicker.
Very sincerely,

LEWIS R. SMOOT, Sr., *President.*

The CHAIRMAN. Thank you very much, Mr. Browne.

Mr. BROWNE. Thank you, Mr. Chairman.

The Chairman. It is my understanding that Senator Nunn is due here at 10:15. I think I will place the committee in recess for about 5 minutes, and then we will immediately go to the markup session when we resume.

Staff might inform Senators of the intended markup of the bills.

The committee will stand in recess until 10:15.

[Whereupon, at 10:12 a.m., the committee recessed, to reconvene at 10:15 the same day in an executive session.]

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APPENDIX



SBANE

SMALLER BUSINESS ASSOCIATION OF NEW ENGLAND, INC.

February 1, 1983

The Honorable Lowell Weicker
United States Senate
303 Hart Senate Office Building
Washington, D.C. 20510

Attention: Kim Elliot

Dear Senator Weicker:

This letter is to express our strong support for S. 272 amendment to the Small Business Act which should greatly facilitate government procurement to small business.

Extending the total participating time from 30 to 45 days and requiring agencies to wait at least 15 days from the time the proposed contract appears in the Commerce Business Daily will mean that far more small businesses will know about and be able to participate in the federal procurement process.

This is critical for small businesses, who often lack a Washington-based representative to provide them early notice of their bids. Without prompt notification, qualified small businesses often are unable to submit a researched bid prior to the cutoff, putting them at a disadvantage to large corporations with Washington intelligence.

In creating legislative guidelines for publication of federal bid announcements, the bill is bound to increase the amount of federal procurement to small businesses, a plus for economic efficiency.

On behalf of the small business community, we applaud your efforts to become a more active participant in the federal procurement process.

Sincerely,

Lewis A. Shattuck
Executive Vice President

LAS/ebp

69 HICKORY DRIVE • WALTHAM, MASSACHUSETTS, 02154 • (617) 890-9070

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National Association of Aircraft & Communication Suppliers, Inc.

P.O. BOX 9176, NORTH HOLLYWOOD, CALIFORNIA 91605

February 8, 1983

The Honorable Lowell Weicker, Jr.
Chairman
Committee on Small Business
United States Senate
Washington, D.C. 20510

Re: S.272

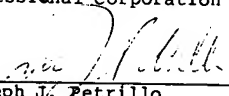
Dear Senator Weicker:

I am writing on behalf of my client, the National Association of Aircraft & Communication Suppliers, Inc. The Association wishes to voice its strong support of S.272. In the last Congress, members of the Association testified at Small Business Committee hearings in California and the District of Columbia in support of S.1947. The bill now under consideration, S.272, continues the meritorious features of S.1947, and improves upon them.

The Association and its members are of the firm conviction that passage of this bill will increase competitive opportunities, particularly for small business, and thereby decrease procurement prices, at no appreciable cost to the Government. For the reasons voiced more fully in our prior statements and testimony on S.1947, we wholeheartedly urge the enactment of S.272.

Very truly yours,

BOWMAN, CONNER, TOUHEY & THORNTON,
A Professional Corporation

By 
Joseph J. Petrillo

Counsel to the National Association
of Aircraft & Communication Suppliers,
Inc.

2828 Pennsylvania Avenue, N.W.
Suite 203
Washington, D.C. 20007
(202) 965-7600

JJP/vb
cc: K. Elliott

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THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

1957 E Street, N.W. • Washington, D.C. 20006 • (202) 393-2040 • TWX: 710-822-9406 AGC WSH

H. C. HELDENFELS, *President* RICHARD S. PEPPER, *Senior Vice President* JAMES D. PITCOCK, JR., *Vice President*

A. A. BENINTEND, *Treasurer*

HUBERT BEATTY, *Executive Vice President*

February 15, 1983

The Honorable Lowell P. Weicker, Jr.
Chairman, Senate Small Business
Committee
U.S. Senate
Washington, D. C. 20510

Dear Senator Weicker:

The Associated General Contractors of America is a national association of approximately 32,000 firms, including more than 8,500 of the Nation's leading general contracting companies. Well over 90 percent of AGC's members are small businesses as defined by SBA's size standards. We would like to have this letter included as part of record on S. 273, legislation extending the SBA 8(a) Pilot Program authority for 18 months.

During the 97th Congress, when AGC was permitted to testify on the proposed extension of the 8(a) Pilot Program, we recommended that construction contracts not be available to the SBA for use in this program. We gave two reasons for making this recommendation: first, the extremely high cost that the 8(a) program engenders to the government and the taxpaying public; second, the incompatibility of the 8(a) program with the very nature of the construction industry. Since the Pilot Program accentuates and exacerbates these flaws it should not be used in the construction industry.

In the last Congress we produced several examples of the high cost of the 8(a) program. These examples demonstrated that the cost of construction work increases from 40 percent to 120 percent when contracts are sole source negotiated with an 8(a) firm rather than competitively bid. Since that time, the competition for available construction work has increased dramatically. It has become common to have 20 to 25 bidders on government contracts, when 8 or less used to be the norm. In many cases all bids come in below the price that the government estimated for the work. With this fierce competition for available work, the differential between the competitively bid price and the sole source negotiated 8(a) price most assuredly has grown substantially. The reason for

THE FULL SERVICE CONSTRUCTION ASSOCIATION FOR FULL SERVICE MEMBERS

Senator Lowell P. Weicker, Jr.
Page Two
February 15, 1983

this fierce competition can be summed up by quoting the first rule of economics: supply and demand. The current poor economy manifests itself in a lack of contracts available for bidding -- thus the high number of bidders. The SBA 8(a) program further reduces the available work by taking more contracts out of the open competitive marketplace. Extending the 8(a) pilot program worsens the situation because the past history of SBA's use of the Pilot Program authority reveals that over 40 percent of the contracts selected for this program were traditional construction contracts.

The 8(a) program is not compatible with the very nature of the construction industry which is dependent on the open competitive bid system. To succeed in this industry a business must learn the skills of surveying the market for available work, deciding which projects are appropriate to the company's capabilities, estimating the project and its cost, obtaining bonding, soliciting subcontractor quotes and preparing and submitting the bid. The 8(a) program does not develop these skills because competitive bidding is not required. Once a contract is obtained through open competitive bidding, the firm's success on the project is dependent on its ability to schedule the progress of the work, to coordinate delivery of materials, manage the performance of its employees, and ensure that any subcontractors on the project are performing their tasks on schedule. The 8(a) program, however, allows firms to subcontract 85 percent of the work, far in excess of what is normally permitted on federal contracts. Performing only 15 percent of the contract allows the firm to act as little more than a conduit for the payment of subcontractors. This does little to assist the firm in furthering its business development.

When Congress first granted an extension to the Pilot Program in October 1980 the Senate Small Business Committee debated the specific intent of the program. The Committee report stated that "... the genesis of the pilot authority, and for its continuation is the nature of contracts which SBA has available for minority firms." The report also notes that "Certainly one purpose of the pilot authority was an opportunity to increase contracting opportunities for minority contractors in non-traditional areas." The SBA and the General Accounting Office have both indicated that their reading of the legislative history of the implementing legislation show that Congress intended the Pilot Program to utilize "non-traditional, technically sophisticated, high volume, and/or multi-year procurements" - procurements which have not been a significant part of the 8(a) program in the past.

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Senator Lowell P. Weicker, Jr.
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We commend you for pointing out in your introductory comments on S. 273 that the Pilot Program gives SBA the "authority to select contracts in non-traditional high technology areas in order to develop minority firms in areas with a high potential for economic growth." We urge, however, that you take this instruction one step further by specifically directing SBA to not make use of construction contracts in the Pilot Program.

Sincerely,


Hubert Beatty
Executive Vice President

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